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The Banking Companies Act, 1949

[*As Amended up to Date*]

With

Rules of Central Government

Containing

***Introduction, Commentaries, up to date
Case Notes etc.***

by

K. M. GHOSH

*Advocate, Calcutta High Court, Author of
Indian Company Law, Partnership Law etc.*

SEPTEMBER 1957

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PREFACE

THIS is no new publication. The salient provisions of the Banking Companies Act were first enacted by the Indian Companies (Amendment) Act XXII of 1936 and introduced as Part X-A of the Indian Companies Act, 1913. As such the aforesaid provisions with commentaries and Rules formed part of my "Indian Company Law". In 1949 on the basis of the aforesaid Part X-A the present Banking Companies Act was passed which with commentaries and Rules was then published as an Appendix to my Indian Company Law".

On account of enactment of the Companies Act, 1956 consisting more than double the number of sections contained in the previous Companies Act, the bulk of my "Indian Company Law" was greatly increased. In view also of the fact that the provisions of the Banking Companies Act are of interest only to a section of the general readers of the company law, it was thought proper to take it out and publish it as a separate book.

Soon after the passing of the Banking Companies Act, 1949 considerable amendments including additions of quite a large number of new sections were made therein, the most important being by the amending Acts 20 of 1950, 52 of 1953 and 95 of 1956. These amendments have been incorporated in the present publication with their Objects and Reasons, Notes on Clauses, Commentaries, up to date Case Notes and an exhaustive Index.

My thanks are due to Shri Sudhindra Kumar Palit, Advocate, Calcutta High Court, for the valuable assistance he has given me in the preparation of this book.

Plot 703A, Block "P",
New Alipur, Calcutta-33 }
and September, 1957.

K. M. GHOSH.

ADDENDA

Amendment of Act. Interpretation.—It is quite true that whenever an amended Act has to be applied subsequent to the date of the amendment, the various unamended provisions of the Act have to be read along with the amended provisions as though they were part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment, retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication—*Shri Ram Narain v. Simla Banking & Industrial Co.* (1956) S.C. 614, (1956) S.C.A. 893, (1956) S.C.J. 579.

Where what one is concerned with is not the meaning of any particular phrase or provision of the Act after the amendment, but the effect of the amending provisions in their relation and effect on other statutory provisions outside the Act, the amendment cannot be treated as having been part of the original Act itself so as to enable the doctrine to be called in aid that a later Act overrides an earlier Act—*ibid.*

In *Shamrao v. District Magistrate* (1962) S.C. 324 at p. 336 it has been said: "The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all." There is no question about the correctness of this dictum. But it has no application here as this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act—*Shri Ram Narain v. Simla Banking & Industrial Co.* (1956) S.C. 614, (1956) S.C.A. 893, (1956) S.C.J. 579.

S. 17. The Central Government has declared that s 17 shall not apply to any banking company in so far as the provisions thereof have the effect of preventing appropriation from the reserve fund maintained in terms of the said section for the purposes of writing off the amount of losses on its investments in Government securities before declaring a dividend out of its net profits for the calendar years, 1956 and 1957—S. R. O. 3007 dated 7.12.1956 in *Gazette of India* dated 15.12.1956, Part II, sec. 3, p. 2129.

S. 24(1). The Central Government has declared that in the case of a banking company in the State of Travancore-Cochin as it existed on 31.10.1956, which is confining its activities to the territories comprising in the State, the provisions of sub-s. (1) of s 24 shall not apply for the period from 1.4.1957 to 31.3.1958, in so far as such provisions require the banking company to maintain in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount in excess of 15 per cent. of the total of its demand and time liabilities in India—S. R. O. 776 dated 7.3.1957 in *Gazette of India* dated 16.3.1957, Part II, sec. 3, page 457.

BANKING COMPANIES ACT

S. 38A. The Central Government has directed that s. 38A shall not have effect in relation to the High Court of Jammu and Kashmir—*S. R. O. 542 dated 11.2.1957 in Gazette of India dated 23.2.1957, Part II, sec. 3, page 337.*

In Notification No. S. R. O. 2057 dated 28.10.1953 for the words "the High Court of Travancore-Cochin", "the High Court of Kerala" should be substituted—*S. R. O. 1376 dated 25.4.1957 published in the Gazette of India dated 4.5.1957 Part II, sec. 3, page 870.*

S. 45G. Section 45G which deals with the public examination of directors and auditors and which says by sub-s. (8) that notes of examination of such evidence may be used later in evidence against the person in civil or criminal proceedings, cannot be said to be *ultra vires* Article 20 (3) of the Constitution—*In re Central Calcutta Bank* (1957) 61 C.W.N. 709.

A public examination of a director under s. 45G does not necessarily mean that the director shall be compelled to be a witness against himself or to give evidence against himself. Express provisions are made in this section to say that only such questions are allowed to be put to the witness as the High Court thinks fit. Art. 20(3) of the Constitution applies to a case where a person is "accused of an offence". An order for public examination under s. 45G is not an accusation for an offence—*ibid*

The constitutional protection begins with the accusation of an offence and not before. The language of Art. 20(3) of the Constitution means that the evidence must come after and not before the accusation of an offence to come within the constitutional protection.—*ibid*.

Third Schedule, Form A. The Central Government has declared that the provisions of note (f) appended to Form A in the Third Schedule to the Act shall not apply, until the 1st January, 1958, to a banking company which, when the value shown in the inner column against any of the sub-heads (ii), (iii), (iv) and (v) of item 4 on the Property and Assets side of the said form exceeds the market value of the investments under that sub-head, shows separately within brackets the market value of the investments under that sub-head—*S. R. O. 3006 dated 7.12.1956 in Gazette of India dated 15.12.1956, Part II, sec. 3, page 2129,*

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INTRODUCTION

1. **History.**—There was no separate law in India relating to banking companies. In 1936, following the recommendations of the Central Banking Enquiry Committee, a chapter, namely Part X-A, was introduced into the Indian Companies Act, 1913 by the Companies (Amendment) Act XXII of 1936. Some of the sections of this Part were subsequently amended by Act II of 1938, Act XXI of 1942 and Act IV of 1944 and by the Adaptation of Laws Orders of 1937 and 1947. The present Banking Companies Act X of 1949 was passed in February, 1949, received the Governor-General's assent on 10th March following and came into force on 16th March, 1949. For objects and reasons of this Act, see Notes under Preamble of the Act and for subsequent amendments of the Act and objects and reasons thereof see *ibid* under the heading "Subsequent Amendments".

PART I

PRELIMINARY.

2. **Extent and commencement of the Act.**—The Act extends to the whole of India [S. 1(2)] It came into force on 16th March, 1949 by virtue of a notification in the Gazette of India dated 10th March, 1949 [see s. 1(3)]

3. **Scope of the Act.**—The provisions of the Banking Companies Act are in addition to those of the Companies Act and any other law for the time being in force, as for instance, the Negotiable Instruments Act, the Codes of Civil and Criminal Procedure, the Penal Code, the Contract Act etc. They are not in derogation of such laws except in so far as expressly provided in this Act (s. 2).

The effect of this is that as regards constitution and incorporation, share capital etc., management and administration, winding up, registration office and fees, existing companies, foreign companies etc., the provisions of the Companies Act are applicable to banking companies except so far as other provisions have been made on the same matters in this Act.

This Act does not apply to co-operative banks registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies (s. 3).

4. **Suspension of operation of the Act.**—In cases of genuine emergency, *e.g.*, run on a bank or banks the Central Government has been empowered to suspend for a period, not exceeding 60 days, the operation of all or any of the provisions of the Act either generally or in relation to a particular bank [s. 4(1)]. As to the procedure in case of special emergency see sub-s. (2) of s. 4, and for the power of extension of the period of suspension see sub-s. (3) thereof.

INTERPRETATION.

5. **Banking company.**—"Banking company" means any company which transacts the business of banking in India, and "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. But any manufacturing or trading company which accepts deposits merely for the purpose of financing its business will not be deemed to be a banking company [s. 5, cl. (c)]:

For meanings of other words and expressions used in the Act, see s. 5 and notes thereunder.

PART II

BUSINESS OF BANKING COMPANIES.

6. Forms of business of a banking company.—In addition to the business of banking, a banking company is entitled to engage in any one or more of the forms of business mentioned in clauses (a) to (o) of s. 6(1), but to no other form of business [sub-s. (2) of s. 6].

7. Use of words "bank", "banker" and "banking".—After two years from the commencement of the Act, (16th March, 1949) a banking company must use as part of its name one or other of the words "bank", "banker" and "banking", and it is debarred from carrying on banking business in India unless it uses one of these words. An association of banks formed for the protection of their mutual interests and registered under s. 26 of the Companies Act, 1913 (now s. 25 of the new Companies Act of 1956) is however exempted from the aforesaid obligation (see s. 7).

8. Prohibition of trading.—As to the prohibition of trading generally by a banking company, except in connection with the realisation of its security etc., see s. 8 and its proviso and explanation.

9. Prohibition of holding immovable property.—As to the prohibition of holding immovable property by a banking company (except such as is required for its own use), and the disposal thereof within a certain period, see s. 9 and its Provisos.

10. Employment of managing agents and other undesirable persons prohibited.—A banking company is prohibited from employing or continuing the employment of a managing agent or any other person mentioned in s. 10. Please see that section.

11. Requirements as to minimum paid up capital and reserves.—For the requirements as to the minimum paid up capital and reserves of a banking company incorporated in and outside India carrying on business in India see the detailed provisions of s. 11.

12. Regulation of capital and voting rights.—As to the regulation of paid up capital, subscribed capital and authorised capital, their respective proportions, the kinds of shares permissible and the voting rights of the shareholders of a banking company, see the detailed provisions of s. 12 the Proviso to which provides that the section shall not apply to a banking company incorporated before 15th January, 1937.

12A. Election of directors by the Reserve Bank's order.—See the new s. 12A.

13. Restriction on commission etc. on sale of shares.—No banking company is allowed to pay commission, brokerage, discount or any other remuneration on its shares issued, exceeding in the aggregate $2\frac{1}{2}$ per cent. of the paid up value of such shares (s. 13).

14. Prohibition of creating charge on unpaid capital.—A banking company is prohibited from creating any charge on its unpaid capital, and such charge, if created, shall be invalid (s. 14).

15. Restriction as to payment of dividend.—A banking company is prohibited from paying any dividend on its shares until all its capitalised expenses including preliminary expenses, organization expenses, share-selling commission, brokerage, losses incurred and any other item of expenditure not represented by tangible assets, have been completely written off (s. 15).

16. Prohibition of common directors.—See the detailed provisions of s. 16.

17. Reserve fund.—Every banking company incorporated in India must maintain a reserve fund and transfer to it each year, out of the net profits before any dividend is declared, at least 20 per cent of such profits until the amount of the said fund is equal to the paid up capital (s 17) As to how the net profits are to be computed see the Explanation to s 17.

18. Cash reserve.—Every banking company, not being a scheduled bank, must maintain a cash reserve, as provided in s 18, of at least 2 per cent of its time liabilities and 5 per cent of its demand liabilities and file with the Reserve Bank before the 15th day of each month 3 copies of a statement of the amount so held on Friday of each week of the preceding month with particulars of its time and demand liabilities on each Friday (see s 18)

19. Restriction on formation of subsidiary companies.—A banking company is debarred from forming any subsidiary company except one formed for one or more of the purposes mentioned in s 19(1) Save as provided therein a banking company must not hold shares in any company as pledgee, mortgagee or absolute owner of an amount exceeding 30 per cent of the paid up share capital of that company or 30 per cent of its own paid up share capital or reserves, whichever is less (see s 19)

20. Restrictions on loans and advances.—A banking company is precluded from making any loans or advances on the security of its own shares, and from granting unsecured loans or advances to any of its directors or to firms or private companies in which it or any of its directors are interested as partner or managing agent, or to any individual firms or private companies in cases where any of the directors is a guarantor [see s 20(1)] Sub-s (2) of s. 20 provides for returns to be submitted to the Reserve Bank relating to the above matters Sub-s (3) invests the Reserve Bank with powers to pass orders and directions in such matters.

For meaning of 'private company' see cl (13) of sub-s (1) of s 2, Indian Companies Act, 1913 (now see cl (iii) of sub-s (1) of s 3 of the new Companies Act, 1956) For meaning of 'firm' see s 4 of the Partnership Act, 1932

21. Power of Reserve Bank to control advances by banking companies.—Section 21 empowers the Reserve Bank to determine the policy in relation to advances to be made by banking companies generally or by a particular banking company The Reserve Bank may also give directions to banking companies generally or to a particular company or group of companies as to the purposes of the advances, the margin to be maintained in respect of secured advances, and the rates of interest to be charged on advances

22. Licensing of banking companies.—For carrying on banking business in India a company is required to hold a license granted by the Reserve Bank [s 22(1)]. As to the application for the license and the requirements of such grant see sub-ss (2) and (3) of s 22 Regarding cancellation of the license see sub-ss. (4) and (5).

23. Restrictions on opening of new, and transfer of existing, places of business.—For the opening of new and transfer of existing places of business, a banking company is required to obtain the prior permission of the Reserve Bank. For detailed provision see s 23.

24. Maintenance of a percentage of assets.—Banking companies are required to maintain in cash, gold or unencumbered approved securities at least 20 per

cent. of the total of its time and demand liabilities in India. For detailed provision, see s. 24. As to the furnishing of returns to the Reserve Bank see sub-s. (3) of this section.

25. Assets in India.—At the close of the last working day of every quarter, the assets in India of a banking company must not be less than 75 per cent. of its demand and time liabilities [s. 25(1)]. As to the return to be submitted to the Reserve Bank of the assets and liabilities of a banking company, see sub-s. (2) of s. 25. For meaning of the words "assets in India" and "quarter" in s. 25 see sub-s. (3) thereof.

26. Return of unclaimed deposits.—Every banking company must, within 30 days after the close of each calendar year, submit a return to the Reserve Bank as at the end of that year, of all accounts in India which have not been operated upon for 10 years (s. 26).

27. Monthly returns and power to call for other returns and information.—As to the monthly returns showing the assets and liabilities in India, to be submitted to the Reserve Bank by a banking company, see s. 27(1). The Reserve Bank may also direct such a company to furnish it with statements and information relating to the business thereof [see s. 27(2)]. The Reserve Bank may publish any such information (s. 28).

28. Accounts and balance-sheet and audit thereof.—As to the preparation and signing of the annual balance-sheet and profit and loss account of a banking company at the expiration of each calendar year, see s. 29. As to the auditing of such accounts and the powers and duties of the auditor in this respect, see s. 30.

29. Submission of accounts and returns.—The accounts and balance-sheet with the auditor's report must be published in the prescribed manner, and 3 copies thereof are to be furnished as returns to the Reserve Bank within 3 months from the end of the period to which they relate (s. 31).

30. Copies of balance-sheets and accounts to be sent to Registrar.—A banking company may, and where it is a private company it shall, send to the Registrar 3 copies of the aforesaid balance-sheet and accounts with the auditor's report. It shall also send to the Registrar any additional statement or information mentioned in s. 27. See s. 32.

For the meaning of "private company", see cl. (13) of sub-s. (1) s. 2 of the Indian Companies Act, 1913 (now cl. (iii) of sub-s. (1) of s. 3 of the Companies Act, 1956). For the meaning of "Registrar" see s. 2 (1) (15) of the Companies Act, 1913 (now s. 2 (40) of the Companies Act, 1956). See s. 32.

31. Display of audited balance-sheet by companies incorporated outside India.—Display will have to be made by a company incorporated outside India, not later than the first Monday in August every year in a conspicuous place in the company's principal office and in every branch office in India, of a copy of its last audited balance-sheet and profit and loss account prepared under s. 29 (see s. 33).

32. Accounting provisions not retrospective.—See s. 34.

33. Inspection.—Power has been given to the Reserve Bank in s. 35 to cause inspection of banking companies' books and accounts by one or more of its officers. The inspecting officer may examine on oath any director or officer of the banking company.

On the report of the Reserve Bank after such inspection, the Central Government may prohibit the banking company from receiving fresh deposits and direct the Reserve Bank to apply under s. 38 for its winding up (see s. 35).

The Central Government may publish the report or any part thereof submitted by the Reserve Bank [see sub-s. (5) of s. 35].

33A. Power of the Reserve Bank to give directions.—Power has been given in the new s. 35A to give directions to the banking companies which the latter shall be bound to comply with.

33B. Amendments of provisions relating to appointments of managing directors, etc. to be subject to the previous approval of the Reserve Bank.—By the new s. 35B it has been provided that no amendment to any provision relating to the appointment, re-appointment or remuneration of a managing director etc. contained in the memorandum, articles etc. shall have effect unless approved by the Reserve Bank, and no such appointment etc. shall have effect unless they are made with the previous approval of the Reserve Bank. For details see s. 35B.

34. Further powers and functions of the Reserve Bank.—See s. 36

PART III

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

35. High Court defined.—In s. 36A inserted by the Banking Companies (Amendment) Act 52 of 1953 “High Court” has been defined as the High Court which exercises jurisdiction in the place where the registered office of the banking company is situated, and in the case of a banking company incorporated outside India, where its principal place of business in India is situated

36. Suspension of Business: Moratorium.—On the application of a banking company which is temporarily unable to meet its obligation, the High Court may make an order staying the commencement and continuance of all actions and proceedings against the company for a period not exceeding 6 months in all. No such moratorium will be declared unless the application is supported by a report of the Reserve Bank, but the High Court may, for sufficient reasons, grant relief even if the application is not accompanied by such report [see sub-ss. (1) and (2) of s. 37].

When such an application has been made, the High Court may appoint a special officer to take into his custody and control all the assets, books, documents etc. of the banking company and to exercise such other powers as the High Court may deem fit to confer upon him [sub-s. (3) of s. 37].

37. Winding up by High Court.—Where a banking company is unable to pay its debts or where the Reserve Bank applies, the High Court will order the winding up of the company (s. 38). As to when such a company will be deemed to be unable to pay its debts, see sub-s. (3) of s. 38.

38. Court liquidator.—By s. 38A introduced by the Banking Companies (Amendment) Act 52 of 1953 provision has been made for appointment by the Central Government of Court liquidators for conducting all proceedings for the winding up of banking companies. For detailed provision see s. 38A.

39. Reserve Bank to be official liquidator.—But the Reserve Bank must be appointed official liquidator, where it applies to be so appointed (s. 39).

40. Stay of proceedings.—Stay of proceedings in relation to the winding up of a banking company shall not be granted by the High Court, unless it is satisfied that an arrangement has been made for payment in full to its depositors as their claims accrue (s. 40).

41. Report of liquidator.—Where a winding up order has been made in respect of a banking company, the official liquidator must submit a preliminary report to the High Court within 2 months of the aforesaid order, giving the information required by s. 177B of the Indian Companies Act, 1913 (now s. 455 of the Companies Act, 1956), to enable the High Court to order the payment of a preliminary dividend, if sufficient assets are available (s. 41).

42. Power to dispense with meetings of creditors, etc.—By s. 42 power has been given to the High Court in the winding up proceedings to dispense with the meetings of creditors or contributories or the appointment of a committee of inspection, if it considers that no object will be secured to justify the consequent delay and expense.

43. Booked depositors' credits to be deemed proved.—In the winding up proceedings the amounts appearing in the books of the banking company to the credit of the depositors shall be deemed to be proved without any claim by the depositors having been filed (see s. 43 substituted for the original s. 43 by Act 52 of 1953).

44. Preferential payments to small depositors.—In the winding up proceedings, after the preferential payments referred to in s. 230 of the Indian Companies Act, 1913 (now s. 530 of the Companies Act, 1956) have been made there shall be paid to every depositor in the savings bank account of the banking company, a sum not exceeding Rs. 100 in priority to all other debts of the company (see s. 43A introduced by Act 52 of 1953).

45. Restriction on voluntary winding up.—A banking company is not allowed to be wound up voluntarily unless the Reserve Bank certifies that the company is able to pay in full its debts as they accrue. The High Court shall, on the application of the Reserve Bank, order the winding up of the company by Court, if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue (s. 44).

46. Procedure for amalgamation of banking companies.—For the detailed procedure for the amalgamation of banking companies see s. 44A introduced by the Banking Companies (Amendment) Act 20 of 1950.

47. Restriction on compromise or arrangement between banking company and creditors.—Any compromise or arrangement between a banking company and its creditors or shareholders will not be sanctioned by the High Court unless the same is certified by the Reserve Bank as not being incapable of being worked and as not being detrimental to the interests of the depositors [see sub-s. (1) of s. 45 substituted for the original section by Act 20 of 1950].

Upon an application under s. 153 of the Indian Companies Act, 1913 (now s. 391 of the Companies Act, 1956) in respect of a banking company, the High Court may direct the Reserve Bank to make an inquiry into the affairs of the company and the conduct of its directors and to submit a report to the High Court [see sub-s. (2) of s. 45 inserted by the Banking Companies (Amendment) Act 52 of 1953].

PART IIIA**SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS**

This new Part IIIA consisting of ss. 45A to 45X has been substituted for the Part IIIA (inserted by Act 20 of 1950) by the Banking Companies (Amendment) Act 52 of 1953.

48. Part IIIA to override other laws.—The provisions of this Part and the Rules made thereunder shall override all other laws, *e.g.*, the Companies Act, Civil Procedure Code, Criminal Procedure Code, etc., except in so far as the same are not varied by or inconsistent with the provisions of this Part (s. 45A).

49. High Court's power to decide all claims.—The High Court shall have exclusive jurisdiction to entertain and decide all claims by or against a banking company or any application made under s. 153 of the Companies Act, 1913 (now s. 391 of the Companies Act, 1956), or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of winding up of a banking company (s. 45B).

50. Transfer of pending proceedings.—After a winding-up order in respect of a banking company, no suit or other proceeding, civil or criminal, which is pending in any other Court immediately before 30th December, 1953, or the date of the winding-up order, whichever is later, shall be proceeded with. The official liquidator shall, within 3 months of the aforesaid date, submit to the High Court a report containing a list and particulars of all such pending proceedings. On receipt of such report, the High Court may make order transferring to itself all or any of the proceedings. If any such proceeding is not so transferred to the High Court it will be continued in the Court in which it is pending (see s. 45C).

51. Settlement of list of debtors.—The High Court may settle a list of debtors in the manner provided in sub-ss. (1) to (3) of s. 45D. At the time of settlement of the list the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders in respect of the relief claimed, including that against a guarantor or in respect of the realisation of any security [sub-s. (4) of s. 45D].

Every such order, subject to the provisions of appeal, shall be final and shall be deemed to be a decree in a suit as provided in sub-s. (5) of s. 45D.

In respect of every such order the High Court shall issue a certificate as provided in sub-s. (6) of s. 45D.

As regards the other powers of the High Court in respect of such debts due to a banking company, see sub-ss. (7) to (9) of s. 45D.

As to the savings of application of s. 45D, see sub-s. (10) of that section.

52. Special provisions to make calls on contributories.—At any time after making a winding-up order, the High Court may make a call on, and order payment thereof by, any contributory under sub-s. (1) of s. 187 of the Indian Companies Act, 1913 [now s. 470 (1) of the Companies Act, 1956], if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability (s. 45E).

53. Documents of banking company to be evidence.—Entries in the books of account or other documents of the banking company shall be admitted in

evidence in all proceedings by or against the company, and they may be proved by production of the books and documents or copies thereof certified to be true by the official liquidator. They shall also be *prima facie* evidence as against the directors of the banking company (see s. 45F).

54. Public examination of directors and auditors.—Upon an order made for the winding up of a banking company the liquidator is to submit a report whether in his opinion loss has been caused to the company by any act or omission on the part of a promoter, director or auditor thereof [sub-s. (1) of s. 45G].

On such report the High Court may hold a public sitting and direct any such promoter, director or auditor to be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to the conduct or dealings of any such persons. For the detailed provisions see sub-ss. (2) to (8) of s. 45G.

As a result of such public examination the High Court may make an order that a director or auditor shall not, without the leave of the High Court, take part in the management, or act as an auditor, as the case may be, of any company for a period not exceeding 5 years [see sub-s. (9) of s. 45G].

55. Special provisions for assessing damages against delinquent directors, etc.—Where an applicant for misfeasance summons under s. 235 of the Indian Companies Act, 1913 (now s. 543 of the Companies Act, 1956) against the directors, promoters etc. of a banking company makes out a *prima facie* case against such persons, the High Court shall make an order against them for repayment or restoration of the money or property, unless they prove that they are not liable. The High Court is also empowered in such a case, before or after making the aforesaid order, to direct the attachment of such property, whether it stands in the name of such person or any other person as ostensible owner (s. 45H).

56. Directors' and officers' duty to assist in the realisation of property.—Every director or other officer of a banking company in liquidation must give assistance to the official liquidator for realisation and distribution of the company's property (s. 45I).

57. Special provisions for punishing offences.—The High Court may, if it thinks fit, take cognizance of and try summarily any offence punishable under this Act or the Companies Act and alleged to have been committed by a promoter, director, etc. of the banking company in liquidation [sub-s. (1) of s. 45J]. When trying any such offence the High Court may also try any other offence with which the accused may under the Criminal Procedure Code be charged at the same trial [sub-s. (2) of s. 45J]. As to the mode of such trial, see sub-s. (3) of s. 45J.

All other such offences in relation to the winding up which are not tried as above in a summary way shall be taken cognizance of and tried by a Judge of the High Court other than the Judge dealing with the winding up proceedings of the banking company [sub-s. (4) of s. 45J].

In order to take cognizance of an offence under s. 45J, it will not be necessary to commit the accused to the High Court for trial, and all such trials shall be without the aid of a jury [sub-s. (5) of s. 45J].

58. High Court's power to enforce schemes of arrangement etc.—Where the High Court makes an order sanctioning a compromise or arrangement in respect of a banking company under s. 153 of the Indian Companies Act, 1913 (now s. 391

of the Companies Act, 1956), it shall have the power to supervise the carrying out of the compromise or arrangement or make modifications therein, and give directions in regard to any matter [sub-s. (1) of s. 45K].

In case the High Court is satisfied that such a compromise or arrangement cannot be worked satisfactorily with or without modification, it can make an order winding up the banking company [sub-s. (2) of s. 45K].

59. Public examination of directors, auditors, etc. of a banking company under schemes of arrangement.—The High Court has been empowered to direct public examination of directors, auditors, etc. where an application for or order sanctioning a scheme of compromise or arrangement is made under s. 153 of the Indian Companies Act, 1913 (now s. 391 of the Companies Act, 1956). In such a case the provisions of s. 45G will be applicable [sub-s. (1) of s. 45L].

Where a compromise or arrangement is sanctioned under the aforesaid s. 153 (now s. 391), the provisions of s. 235 of the Indian Companies Act, 1913 (now s. 543 of the Companies Act, 1956) and s. 45H of the Banking Companies Act shall apply to the banking company as if the order sanctioning the compromise or arrangement were made for its winding-up [sub-s. (2) of s. 45L].

60. Special provisions for banking companies working under schemes of arrangement at the commencement of the amending Act of 1953.—See s. 45M.

61. Appeals.—An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject matter of the claim exceeds Rs 5,000 [sub-s. (1) of s. 45N].

The High Court may by rules provide for an appeal against an order under s. 45J [sub-s. 2 of s. 45N].

Subject as aforesaid every order or decision of the High Court shall be final [sub-s (3) of s. 45N].

62. Special period of limitation.—In computing the period of limitation prescribed for a suit or application by a banking company in liquidation, the period commencing from the date of the presentation of the petition for winding up, shall be excluded [sub-s. (1) of s. 45O].

There shall be no period of limitation for the recovery of arrears of calls from any director of such a banking company or for the enforcement of any claim against him based on contract. In respect of all other claims by the banking company against its directors the period of limitation shall be 12 years from the date of the accrual of such claims [sub-s (2) of s. 45O].

63. Reserve Bank to tender advice in winding-up proceedings.—In the winding-up proceedings of a banking company where the High Court has directed the official liquidator to obtain the advice of the Reserve Bank, the latter is empowered to examine the records of any such proceeding and tender such advice as it may think fit (s. 45P).

64. Reserve Bank's power to inspect.—On being directed by the Central Government or the High Court, the Reserve Bank shall cause an inspection to be made by one or more of its officers, of a banking company in liquidation and its books and accounts. On such inspection it shall submit its report to the Central Government and the High Court. On receipt of such report or on any irregularity being brought to its notice by the Central Government, the High Court may give such directions as it may consider necessary (s. 45Q).

65. Reserve Bank's power to call for returns and information.—The Reserve Bank is empowered by a notice in writing to require the liquidator of a banking company which is being wound up (this will include a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits) to furnish it any statement or information relating to the banking company, and it shall be the duty of the liquidator to comply with such requirements (s. 45R).

66. Chief Presidency Magistrate and District Magistrate to assist official liquidator in taking charge of property.—On request made by the official liquidator or the special officer appointed under sub-s. (3) of s. 37, the Chief Presidency Magistrate or the District Magistrate, within whose jurisdiction any property or books of account of a banking company in liquidation may be situate, will take possession thereof and forward them to the official liquidator or the special officer, as the case may be (s. 45S).

67. Enforcement of orders and decisions of High Court.—All orders made in any civil proceeding by a High Court may be enforced like its decrees made in any suit pending therein [sub-s. (1) of s. 45T]. For the procedure, see sub-s. (2) of s. 45T. As to the additional power of recovering the amount found due by the High Court, in the same manner as an arrear of land revenue, see sub-s. (3) of s. 45T.

68. High Court's power to make rules.—The High Court is empowered to make rules consistent with this Act and the rules made by the Central Government under s. 52, prescribing matters mentioned in s. 45U.

69. Reference to directors, etc.—Any reference in Part IIIA to a director, manager, liquidator, officer or auditor of a banking company shall include a reference to past or present director, etc. (s. 45V).

70. Part II not to apply to Banking Companies that are being wound-up.—See s. 45W.

71. Validation of proceedings etc. taken in Court other than the High Court before 30th December, 1953.—No proceeding held, judgment delivered or decree or order made before the commencement of the Banking Companies (Amendment) Act, 1953 by any Court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be ever to have been invalid (s. 45X).

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72. Penalties.—As to the penalties for making false statements in any return, balance sheet etc., see sub-s (1) of s. 46. For penalties for failure to produce any book, account, etc. as provided in s. 35(2) or to answer any question asked by an inspecting officer, see s. 46(2). For receiving deposits in contravention of an order under s 35(4)(a), see s. 46(3). And for contravention of any other provision of this Act or for default in complying with the requirements of this Act or of any order made thereunder, see s. 46(4).

73. Cognizance of offences.—No Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence mentioned s. 46, and no Court shall take cognizance of such an offence except on the complaint in writing made by an officer of the Reserve Bank (s. 47).

74. Application of fines.—See s. 48.

75. Special provisions for private banking companies.—Exemptions in favour of private companies provided in ss. 90, 165, 255, 293, 300 and 416 of the Companies Act, 1956 shall not operate in favour of a private banking company (s. 49).

76. Certain claims for compensation barred.—No person shall have any right to compensation for any loss caused by reason of the operation of ss. 10, 12A, 16, 35A, 35B and 36 or by reason of the compliance by a banking company with any order or direction given to it under this Act [see s. 50].

77. Application of certain provisions of this Act to the Imperial Bank of India (now State Bank of India). See s. 51.

78. Central Government's power to make rules.—This has been provided in s. 52.

79. Central Government's power to exempt certain banking companies.—The Central Government is empowered to declare that any or all of the provisions of this Act shall not apply to any banking company or to any class of such companies either generally or for a certain period (s. 53).

80. Protection of action taken under the Act.—As to the protection of the Central Government, the Reserve Bank or any officer from suits or other legal proceedings for any thing done or intended to be done in good faith in pursuance of this Act, see s. 54.

THE BANKING COMPANIES ACT, 1949.

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THE BANKING COMPANIES ACT, 1949

Act No. X of 1949.

*An Act to consolidate and amend the law relating to Banking Companies.
[Received the Governor-General's assent on 10th March, 1949.]*

Whereas it is expedient to consolidate and amend the law relating to banking companies;

It is hereby enacted as follows:—

1. **Preamble.**—As to the controlling power of the preamble in construing the sections of the Act, see Note 9 under the heading "Preamble" in the beginning of author's "Indian Company Law", 10th edition.

2. **Consolidating Act.**—For construction of a consolidating Act see Note 10 *ibid.*

3. **Objects and Reasons of Act X of 1949.**—The provisions of law relating to banking companies at present form a subsidiary portion of the general law applicable to companies and are contained in Part XA of the Indian Companies Act, 1913. These provisions, which were first introduced in 1936, and which have undergone two subsequent modifications, have proved inadequate and difficult to administer. Moreover, while the primary objective of Companies Law is to safeguard the interests of the stockholder, that of banking legislation should be the protection of the interests of the depositor. It has therefore been felt for some time that separate legislation was necessary for the regulation of banking in India. The need has become the more insistent on account of the considerable development that has taken place in recent years in banking, especially the rapid growth of banking resources and of the number of banks and branches. Regard must also be had to the fact that the banking system is likely in the post-war period to be more vulnerable by reason of the great expansion, both quantitatively and relatively, that has taken place in demand deposits, as compared with time deposits, during the years. The enactment of a separate comprehensive measure has in consequence now become imperative.

With this object in view, a Bill to amend the law relating to Banking Companies was introduced in the Legislative Assembly in November, 1944 and was subsequently circulated for eliciting public opinion through the Provincial Governments. In the ensuing Budget Session of the Assembly the Bill was referred to a Select Committee. A fresh Bill with certain modifications which suggested themselves on consideration of the opinions and criticisms received on the 1944 Bill was introduced in the Legislative Assembly in March, 1946 and was referred to a Select Committee in April 1946. The report of the Select Committee was presented to the Assembly on the 17th February, 1947. As it was the original intention of the Government that the Bill should be taken up for disposal by the Constituent Assembly (Legislative) in the form in which it emerged from the Select Committee and that the changes necessitated in the Bill as a result of the passing of the Indian Independence Act, 1947 and other developments should be moved in the House as separate amendments, a

motion for the continuation of that Bill was adopted on the 17th November, 1947. In view however of a fairly large number of amendments, Government considered that the passage of the measure would be facilitated if the Bill as reported upon by the Select Committee were withdrawn and a fresh Bill incorporating all the amendments were introduced and referred to a Select Committee. The Bill was accordingly withdrawn on the 30th January, 1948. The present Bill is the result of long and detailed consideration by expert Committees, the Reserve Bank, the public including the representatives of banks, the Government and the Legislature. The main features of the Bill are as follows:—

- (i) A comprehensive definition of 'banking' so as to bring within the scope of the legislation all institutions which receive deposits, repayable on demand or otherwise, for lending or investment;
- (ii) Prohibiting non-banking companies from accepting deposits repayable on demand;
- (iii) Prohibition of trading with a view to eliminating non-banking risks;
- (iv) Prescription of minimum capital standards;
- (v) Limiting the payment of dividends;
- (vi) Inclusion in the scope of the legislation of banks incorporated or registered outside the Provinces of India;
- (vii) Introduction of a comprehensive system of licensing of banks and their branches;
- (viii) Prescription of a special form of balance sheet and conferring of powers on the Reserve Bank to call for periodical returns;
- (ix) Inspection of the books and accounts of a bank by the Reserve Bank;
- (x) Empowering the Central Government to take action against banks conducting their affairs in a manner detrimental to the interests of the depositors;
- (xi) Provision for bringing the Reserve Bank of India into closer touch with banking companies;
- (xii) Provision of an expeditious procedure for liquidation;
- (xiii) Bringing the Imperial Bank of India within the purview of some of the provisions of the Bill;
- (xiv) Widening the powers of the Reserve Bank of India so as to enable it to come to the aid of banking companies in times of emergency;
- (xv) Provision for the extension of the Act to acceding States.

(See *Gazette of India* dated April 3, 1948, Part V, pp. 311-12).

For Notes on clauses see *ibid*, pp. 312-18.

For Report of the Select Committee on the Bill see *Gazette of India* dated February 2, 1949, Part V, pp. 45 *et seq.*

4. **Subsequent amendments.**—Large amendments were made in the Act in a year by the Banking Companies (Amendment) Act XX of 1950 which received the President's assent on 18th March, 1950. These have been shown in their proper places under the sections.

Then on 24th October, 1953 an Ordinance, viz. Ordinance No. 4 of 1953, was issued making further large amendments in the Act. The provisions of this

Ordinance were incorporated in Bill No. 50 of 1953 which was passed by Parliament and became the Banking Companies (Amendment) Act 52 of 1953. It came into force on 30th December, 1953, and repealed the said Ordinance.

5. **Objects and Reasons of Act 52 of 1953.**—The following were the objects and reasons of this Amending Act of 1953:—"The Banking Companies Act, 1949 (X of 1949) was passed to ensure proper administration of the banking companies in India. The liquidation of banks, however, continued to be governed by the provisions of the Indian Companies Act, 1913.

"Experience of the liquidation of a large number of banks that failed during the post-war and post-partition period disclosed that the procedure for the liquidation of joint stock companies was totally inadequate for the liquidation of banking companies in a manner satisfactory to the depositors. A bank has a far larger number of debtors than a joint-stock company of a comparable size and the necessity to pursue legal proceedings against each debtor, quite frequently in different courts, involves considerable expenditure and immense delay. In order to remove such difficulties, the Banking Companies Act was amended in 1950.

"The law thus amended, however, did not go far enough and complaints continued to be received about the distress of the depositors. A Committee was, therefore, appointed in July, 1950 to examine the difficulties and defects in the existing liquidation procedure and to recommend changes in law, procedure and machinery, in order to facilitate the speedy disposal of proceedings in liquidation. The Committee submitted its report in December, 1952 and the report discloses that 321 banks were under liquidation under the various courts dating from 1926, with outside liabilities of about Rs 30 crores and that the procedure for winding up of banking companies is cumbersome, prolonged and expensive. The Committee has recommended certain administrative as well as legislative measures for simplifying the procedure and expediting the proceedings. The Reserve Bank, the State Government and the various High Courts were consulted on the recommendations of the Committee and the present Bill is based on the recommendations of the Committee and the suggestions of the authorities consulted.

"The recommendations of the Committee requiring administrative action are being implemented. It was the intention of the Government to give effect to the recommendations requiring legislation simultaneously, but on account of the pre-occupation of Parliament with other urgent legislative measures during the last session, it was not found possible to have the Bill enacted during that session. Meanwhile certain data recently collected about 82 banks in liquidation in West Bengal showed that while the expenses of the liquidation amounted to Rs. 39.81 lakhs, the monies returned to the depositors totalled to only Rs. 17.64 lakhs of which Rs 15.61 lakhs were paid by one single bank. The publication of the Committee's report has evoked hopes in the minds of large number of distressed depositors that implementation would soon follow and numerous requests were being received urging immediate action. It was also not possible to implement some of the administrative measures, without an amendment of the Act. As the circumstances required immediate action, an Ordinance was promulgated on the 24th October 1953—The Banking Companies (Amendment) Ordinance, 1953 (4 of 1953)".

See Gazette of India Extraordinary dated 16th November, 1953, Part II, Section 2, pp. 945-49.

The Notes on Clauses have been given under the amended sections.

Recently considerable amendments in the Banking Companies Act were again made by Banking Companies (Amendment) Act, 95 of 1956 which came into force on 14th January, 1957. (*Vide* Gazette of India dated 19. 1. 57, Part II, Sec. 3, p. 178), with the following Objects and Reasons:—

6. **Objects and Reasons.**—"Experience has shown that the existing provisions in the Banking Companies Act, 1949, are not adequate to prevent certain undesirable tendencies in the administration of banking companies which might affect the soundness of the companies or not be in the public interest or in the interests of the depositors. The present Bill, therefore, seeks to amend the Act so as to tighten up control over banking companies in the following directions:—

(i) to check the payment of excessive remuneration to bank employees on a consideration of all relevant factors;

(ii) to make the existing restrictions on exercise of voting rights in the hands of individual shareholders applicable to banks which are now exempt from such restrictions, namely, those established before the 15th January, 1937; and to empower the Reserve Bank to direct the election of fresh directors on the basis of the restricted voting rights;

(iii) to prohibit appointment as director of one who is director of other companies which together can exercise voting rights in excess of 20 per cent. of voting rights in a banking company;

(iv) to enable the Reserve Bank to obtain statements and information over a wider range than hitherto for the performance of the functions under the Act;

(v) to enable the Reserve Bank to give directions to banking companies in relation to matters of policy or administration affecting the public interest, and to make failure to observe such directions liable to specified penalties;

(vi) to render appointments of managing directors, managers or the chief executive officers by whatever name called of banking companies and the terms of their appointments subject to the prior approval of the Reserve Bank;

(vii) to enable the Reserve Bank to depute an observer or observers for purpose of observing and reporting on the conduct of affairs of a banking company;

(viii) to include the chairman, director, auditor, liquidator and other employees of banking companies within the definition 'public servants' for the purpose of Chapter IX of the Indian Penal Code and the Prevention of Corruption Act, 1947, so that action can be taken in cases where illegal gratifications are taken by them;

2. Opportunity has also been taken in the Bill to clarify—

(a) that the payment of bonus to bank employees does not amount to employment on the basis of a commission or a share of profits which is prohibited under clause (b) of sub-section (1) of section 10 of the Banking Companies Act; and

(b) that restrictions imposed by clause (c) of sub-section (1) of section 10 of the Banking Companies Act on persons appointed to manage banking companies are not applicable to directors other than managing directors.

3. The Bill also provides for references contained in the Banking Companies Act to the Indian Companies Act, 1913, being substituted by references to the relevant sections of the Companies Act, 1956."

See Gazette of India Extraordinary dated 7th December, 1956, Part II—Section 2, pages 1072-73.

PART I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Banking Companies Act, 1949.

“(2) It extends to the whole of India” * * *

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf.

Amendment.—In this section the new sub-s. (2) within inverted commas was substituted for sub-s. (2) by the Banking Companies (Amendment) Act XX of 1950 which received the assent of the President on 18th March, 1950. Then by the Jammu and Kashmir (Extension of Laws) Act, 1956 (which came into force on 1st November, 1956) the words “except the State of Jammu and Kashmir” were omitted.

Sub-sec. (1). Scope.—The Act is confined to companies carrying on the business of banking. “It would be impracticable to include within its scope all institutions and individuals dealing in credit in view of the complex credit structure of the country and the fact that the money-lending is an item of provincial legislation—*Notes on Clauses.*”

Sub-sec. (3).—The Act came into force on 16th March, 1949—See Notification No. 2172 dated 10th March, 1949 in the Gazette of India Part I, p. 326.

2. The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the “Companies Act, 1956”, and any other law for the time being in force.

Application of other laws not barred.

“Except in matters pertaining to banking, it is desirable that the Indian Companies Act should continue to be applicable to banking companies”—*Notes on Clauses.*

Amendment.—In this section the words within inverted commas have been substituted for the words and figures ‘Indian Companies Act, 1913 (VII of 1913)’ by the Banking Companies (Amendment) Act, 1956. But this amendment does not apply to a banking company the winding up of which commenced before 1st April, 1956. See s. 14, Proviso, of the aforesaid amending Act.

7. “The Indian Companies Act, 1913” (now Companies Act, 1956).—The Banking Companies Act should be read as supplemental to and part of the Companies Act—*Federal Bank v. Durga Das* (1954) Punj. 21. So, ss. 171 and 232 of the Companies Act, 1913 (now ss. 446 and 537 respectively of the Companies Act, 1956) are applicable to winding up proceedings in respect of a bank even after the amendment made in the Banking Companies Act in 1953.—*Ram Narain v. Simko Banking and Industrial Co.* (1956) S. C. 614, (1956) S. C. A. 693, (1956) S. C. J. 579. See also *Calcutta National Bank v. Sonapur Tea Co.* (1957) C. 9.

8. “Any other law for the time being in force”.—Similarly s. 45F of the present Act is not a provision in derogation of the Evidence Act, 1872, the Bankers’ Books Evidence Act, 1891 and the ordinary law of evidence, but is in addition thereto. S. 2 of the present Act gives an added facility to a banking company

in liquidation to prove the entries in the books of account, either by production of the books or by the requisite liquidator's certificate as required by the Bankers' Books Evidence Act, 1891—*Calcutta National Bank v Sonarpur Tea Co.* (1957) C. 9. The expression "any other law" also covers the Negotiable Instruments Act, Contract Act etc.

See Introduction, para 3.

"Save as hereinafter expressly provided":—See ss. 11, 13, 20, 29, 35, 38, 43, 45A, 45E and 49 of the present Act.

3. Nothing in this Act shall apply to a co-operative bank registered under the Co-operative Societies Act, 1912 (II of 1912), or any other law for the time being in force in any "part of India" relating to co-operative societies.

Act not to apply to co-operative banks.

Amendment.—In this section the word "State" was substituted for "Province" by the Adaptaion of Laws Order, 1950. Then by the Banking Companies (Amendment) Act, 1950 the words "part of India" were substituted for the word "State".

9. Co-operative banks.—"It is unnecessary to include co-operative banks which are governed by special legislation"—*Notes on Clauses.*

4. (1) The Central Government, if on a representation made by the Reserve Bank in this behalf it is satisfied that it is expedient so to do, may by notification in the official Gazette suspend for such period, not exceeding sixty days, as may be specified in the notification, the operation of all or any of the provisions of this Act, either generally or in relation to any specified banking company.

Power to suspend operation of Act.

(2) In a case of special emergency, the Governor of the Reserve Bank, or in his absence a Deputy Governor of the Reserve Bank nominated by him in this behalf may, by order in writing, exercise the powers of the Central Government under sub-section (1) so however that the period of suspension shall not exceed thirty days, and where the Governor or the Deputy Governor, as the case may be, does so, he shall report the matter to the Central Government forthwith, and the order shall, as soon as may be, be published in the Gazette of India.

(3) The Central Government may, by notification in the official Gazette, extend from time to time the period of any suspension ordered under sub-section (1) or sub-section (2) for such period, not exceeding sixty days at any one time, as it thinks fit so however that the total period does not exceed one year.

(4) A copy of any notification issued under sub-section (3) shall be laid on the table of "Parliament" as soon as may be after it is issued.

Amendment.—In sub-s. (4) of this section the word "Parliament" was substituted for the words "Dominion Legislature" by the Adaptation of Laws Order, 1950.

Object.—The object underlying this section is that in cases of genuine emergency, e.g., a general run on all banks or a run on some banks in a particular area, Government should have power to suspend the operation of the Act after considering the recommendations of the Reserve Bank. The suspension of section 24 will, for instance, enable the Reserve Bank to give an advance to tide over a banking crisis against liquid assets maintained by banks under the section—*Notes on Clauses.*

Sub-s. (3).—The last words of this sub-section beginning with "so however" were added by the Select Committee.

Sub-s. (4).—This sub-section was added by the Select Committee, so that the Parliament may have an opportunity to consider any extensions granted under this section.

Compare s. 53 *post*.

Interpretation.

5. (1) In this Act, unless there is anything repugnant in the subject or context,—

(a) "approved securities" means securities in which a trustee may invest money under clause (a), clause (b), clause (bb), clause (c) or clause (d) of section 20 of the Indian Trusts Act, 1882 (II of 1882); * * *

(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking "in India";

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

(d) "company" means any company which may be wound up under the "Companies Act, 1956";

(e) (omitted) * * * *

(f) "demand liabilities" means liabilities which must be met on demand, and "time liabilities" means liabilities which are not demand liabilities;

(g) "gold" includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not;

["(gg) (omitted.)] * * *

(h) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a banking company by virtue of an agreement with the company or by virtue of the memorandum or articles of association relating thereto, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, memorandum or articles of association, and includes any person, firm or company occupying such position by whatever name called;

Explanation.—If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be deemed to be a managing agent for the purposes of this Act;

(i) "private company" has the same meaning as in the "Companies Act, 1956";

(j) "prescribed" means prescribed by rules made under this Act;

(k) "registrar" has the same meaning as in the "Companies Act, 1956";

(l) "Reserve Bank" means the Reserve Bank of India;

(m) "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934; and

(n) "secured loan or advance" means a loan or advance made on the security of assets the market value of which is not at any time less than the amount of such loan or advance; and "unsecured loan or advance" means a loan or advance not so secured.

(2) * * * *

Amendment.—In sub-s. (1), cl. (a) the words "and such securities of, or fully guaranteed by, Part B States as the Reserve Bank may be authorised to purchase under clause (8) of section 17 of the Reserve Bank of India Act, 1934 (II of 1934)" were omitted by the Adaptation of Laws (No. 3) Order, 1956 which came into force on 1st November 1956. In cl. (c) the words "in India" were substituted for "any State of India" by the Banking Companies (Amendment) Act 20 of 1950. In sub-s. (1) clause (gg) was added by the Banking Companies (Amendment) Act, 1950 but was omitted by the Jammu and Kashmir (Extension of Laws) Act, 1956 which came into force on 1st November, 1956.

Cl. (e) was omitted by the Banking Companies (Amendment) Act 52 of 1953 which came into force on 30th December, 1953. "The expression, 'court' was defined in s. 5 to mean the court having jurisdiction under the Indian Companies Act, 1913. In parts III and IIIA, the expression 'High Court' has been used. The definition of 'court' in s. 5 is misleading and has been omitted"—*Notes on Clauses.*

In cls (d), (i) and (k) the words "Indian Companies Act, 1956" have been substituted for the words "Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956 which came into operation on 14th January, 1957.

Sub-s. (2) was omitted by the Adaptation of Laws Order, 1950.

Interpretation.—This word was substituted by the Select Committee for the word "Definition" occurring in the Bill.

10. **Construction of definition.**—While the construction of the definition of a term in a statute should be such as not to be repugnant to the context, it must equally be such as would aid the achievement of the purpose that is sought to be served by the Act. A construction that would defeat or enable the defeating of the purpose of the Act should never be accepted—*Vasan Bos. v. O. L. Associated Banking Corporation of India Ltd.* (1952) Tr. Coch 170.

11. **CL. (a). Approved Securities.**—The word "Approved" was substituted by the Select Committee for the word "Approval" occurring in the Bill.

The following are the securities mentioned in the relevant clauses of s. 20 of the Indian Trusts Act, 1882, namely:—

(a) Promissory notes, debentures, stock or other securities of any State Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland: Provided that securities, both the principal whereof and the interest wherein shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause to be securities of such Government;

(b) Bonds, debentures and annuities charged or secured by the Parliament of the United Kingdom or the revenues of India or of the Union or of any State: Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid;

(bb) India 3½ per cent. stock, 3 per cent. stock, 2½ per cent. stock or any other capital stock which before the 15th day of August, 1947 was issued by the Secretary of State for India in Council under the authority of an Act of Parliament of the United Kingdom and charged on the revenues of India or which was issued by the Secretary of State on behalf of the Governor-General in Council under the provisions of Part XIII of the Government of India Act, 1935;

(c) Stock or debentures of, or shares in, Railway or other companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Central Government or in debentures of the Bombay Provincial Co-operative Bank Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council or the State Government of Bombay; and

(d) *Debentures or other securities for money issued under the authority of any Central Act or State Act, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency town.*

For securities that may be purchased under the Reserve Bank of India Act, see s. 17 of that Act.

12. **Cl. (b). Banking.**—The definition of banking in section 277 F of the Indian Companies Act gave rise to administrative difficulties, particularly in respect of the words 'principal business' in determining whether a company comes within its scope. The new definition is intended to connect banking definitely with the acceptance of deposits from the public for the purpose of lending or investment and to bring within its ambit all the banks which accept demand or time deposits—*Notes on Clauses.*

The principal part of the business of a banker is "receiving money on deposit allowing the same to be drawn again, as and when the depositor desires, and paying interest on the amount on deposit"—*Bottomgate I. & C. Society* (1891) 65 L.T. 712, per Smith J. at p. 714.

13. "A 'banker' is an individual, partnership or corporation, whose sole or pre-dominating business is banking, that is, the receipt of money on current or deposit account, and the payment and collection of cheques, drawn by or paid in by the customer"—*Hals.* 3rd ed., vol. II, para 277.

The definition of "banking" in this clause makes it clear that acceptance of deposits is *sine qua non* to constitute banking business—*Samyaktha Samajam v. Ooli Kalyani* (1954) Tr.-Coch. 50. A *Samajam*, even though consisting of 15 members, which carries on money-lending business, will not be a banking company registrable under the Companies Act, if there is no evidence to show that it was formed for accepting deposits or was actually accepting deposits at any time—*ibid.*

14. **Cheque.**—For definition of *cheque*, see s. 6 of the Negotiable Instruments Act XXVI of 1881, and for definition of *crossed cheque* see ss. 123 to 125, *ibid.* A *bearer cheque* is one which is expressed to be payable to a particular person or bearer, or to bearer—*Hals.* 3rd ed., vol II, para 278. An *order cheque* is one which is expressed to be so payable, or which is expressed to be payable to a particular person or body and does not contain words prohibiting transfer or indicating an intention that it should not be transferable—*ibid.*

15. **Cl. (c). Banking Company.**—The explanation was added to this section by the Select Committee with the following observation: "The mere acceptance of deposits by companies, like textile mills, etc., for the purpose of financing their own businesses should not be regarded as 'banking' within the meaning of this Act, and although we are given to understand that this would be so even under the existing definition of 'banking', we have thought it advisable to make the legal position clear by adding an *Explanation* to this effect in the definition of 'banking' company'."

16 *Meaning of the definition*—The definition of banking company in this section does not mean that the company must, at the time in question, be able to accept deposits of money from the public repayable on demand or on such terms on which the money might have been deposited. It means that banking should be the primary business of the company even if, by reason of certain supervening causes, it is not able for the time being to carry on the work of receiving deposits and making payments.—*Jwala Bank v. Shetla Prasad* (1950) A. 309.

This definition means that transacting the business of banking should be its business and not that that business should have been transacted at any particular point of time. A banking company continues to exist even after proceedings are started for its liquidation until it is dissolved by the order of Court, and so long as it exists it retains its original character—*Vasson Bros v O. L. Associated Banking Corporation* (1952) Tr.-Coch 170. The Court dealing with an application for winding up is entitled to sanction a scheme for reconstruction upon which, if done, the company would continue to function—*ibid*. Unlike the law of companies in general which aims at the protection of the stock-holders, the present Act is meant to safeguard the interests of the depositors. If a banking company can escape the operation of this Act by cessation of business, the Act can easily be rendered nugatory—*ibid*.

16A Cl. (d). Company.—For the definition of “company” and “existing company” see clauses (2) and (7) respectively of sub-s. (1) of s 2 of the Indian Companies Act, 1913 (now s 3(1)(i) and (ii) of the Companies Act, 1956). For the definition of ‘unregistered company’, see s 270 of that Act (now s 582 of the Companies Act, 1956). As such an unregistered company may be wound up under the Companies Act, it is also included in the present definition. For the provision for winding up of an unregistered company, see Part IX of the Indian Companies Act, 1913 (now Part X of the Companies Act, 1956)

17. Cl. (f). Demand liabilities and time liabilities.—The definitions of “demand liabilities” and “time liabilities” are the same as were in sub-s (2) of s 277L (now repealed) of the Indian Companies Act, 1913.

18. Cl. (h). Managing Agent.—Compare cl (9A) of sub-s (1) of s 2 of the Indian Companies Act, 1913 [now s 2(25) of the Companies Act, 1956].

The words “or by virtue of the memorandum or articles of association relating thereto” and “memorandum of association” after that were added by the Select Committee “as it is possible that, a person may be entitled to the management of the affairs of a banking company under its memorandum or articles of association”—*Report of the Select Committee*.

19 Cl. (i). Private company.—See cl (13) of the Indian Companies Act, 1913 [now s 3(1)(iii) of the Companies Act, 1956]

20 Cl. (k).—Registrar.—See cl (15) of sub-s (1) of s 2 of the Indian Companies Act, 1913 [now s 2(40) of the Companies Act, 1956]

PART II

BUSINESS OF BANKING COMPANIES

Forms of business in which banking companies may engage.

6. (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely:—

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security;

the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips or valuables on deposit or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;

(b) acting as agents for any Government or local authority or any other person or persons; the carrying on of agency business of any description including the clearing and forwarding of goods, giving of receipts and discharges and otherwise acting as an attorney on behalf of customers, but excluding the business of a managing agent of a company;

(c) contracting for public and private loans and negotiating and issuing the same;

(d) the effecting, insuring, guaranteeing, underwriting, participating in managing and carrying out of any issue, public or private, of State, municipal or other loans or of shares, stock, debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;

(e) carrying on and transacting every kind of guarantee and indemnity business;

(f) managing, selling and realising any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims;

(g) acquiring and holding and generally dealing with any property or any right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security;

(h) undertaking and executing trusts;
 (i) undertaking the administration of estates as executor, trustee or otherwise;

(j) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons; granting pensions and allowances and making payments towards insurance; subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful object;

(k) the acquisition, construction, maintenance and alteration of any building or works necessary or convenient for the purposes of the company;

(l) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company;

(m) acquiring and undertaking the whole or any part of the business of any person or company, when such business is of a nature enumerated or described in this sub-section;

(n) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;

(o) any other form of business which the Central Government may, by notification in the official Gazette, specify as a form of business in which it is lawful for a banking company to engage.

(2) No banking company shall engage in any form of business other than those referred to in sub-section (1).

Part II. The provisions of this part shall not apply to a banking company which is being wound up (s. 45W *post.*)

Sub-s. (1) of this section is based on s. 277F (now repealed), and sub-s. (2) is based on sub-s. (2) of s. 277G of the Indian Companies Act, 1913 (now repealed).

21. **CL (1).**—Under the present Act a banking company can dispose of or turn to account or otherwise deal with all or any part of the property and rights of the company—*Kirpa Ram v. Shrijans Prasad* (1951) Punj. 79, 53 P.L.R. 469.

Penalty. For the penalty for contravention of this section see s. 46(4) *post.*

7. After the expiry of two years from the commencement of this Act, no company, other than a banking company, shall use as part of its name any of the words "banker", "banking", "bank", "banker" or "banking" and no company shall carry on the business of banking "in India", unless it uses as part of its name at least one

of such words: Provided that nothing in this section shall apply to any association of banks formed for the protection of their mutual interests and registered under "section 25 of the Companies Act, 1956".

This section was recast by the Select Committee with the following observation. "We see no reason why existing banks should be exempted from having to use as part of their name, one of the words 'bank', 'banker' or 'banking', if they actually carry on the business of banking. We have, therefore, omitted the proviso to sub-clause (1) and, incidentally, have recast the whole of this clause so as to bring out the prohibition contained therein more prominently."

22. *Commencement of the Act.*—16th March, 1949—See notes to sub-s. (3) of s 1 ante.

23. *Name of company—Importance of.*—Having regard to the present section and s. 277F of the Companies Act of 1913 (repealed by s 56 of the present Act) the name is particularly important in ascertaining if the principal business of the company is banking business—*In re Union Bank of Bengal* (1955) N. U. C. 2907 (Cal) In the last cited case it has been held, on a consideration of the several object clauses in the memorandum together with the company's name, that the principal business of the company was the business of banking.

Amendment.—In this section the words "section 25 of the Companies Act, 1956" have been substituted for the words "section 26 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

The words "in India" were substituted for other words by the Banking Companies (Amendment) Act 20 of 1950.

Proviso.—See s. 25 of the Companies Act 1956 and notes thereto.

Penalty. As to the penalty for contravention of this section see s 46(4) post.

8. Notwithstanding anything contained in section 6 or in any contract, no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others otherwise than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in clause (i) of sub-section (1) of section 6:

Prohibition of trading

Provided that this section shall not apply to any such business as aforesaid which was in the course of being transacted on the commencement of this Act, so however, that the said business shall be completed before the expiry of one year from such commencement.

Explanation.—For the purposes of this section, "goods" means every kind of movable property, other than actionable claims, stocks, shares, money, bullion and specie, and all instruments referred to in clause (a) of sub-section (1) of section 6.

This was clause (9) of the Bill. Cl. (8) thereof was omitted by the Select Committee.

This section "is intended to prohibit a bank from engaging directly or indirectly in trading activities and undertaking trading risks in addition to ordinary banking risks. Certain banks have been found to engage in such activities under the guise of agency business"—*Notes on Clauses.*

Commencement of the Act.—See notes to the previous section

Penalty.—As to the penalty for contravention of this section, see s 4b(4) *post*.

9. Notwithstanding anything contained in section 6, no banking company shall hold any immovable property howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the acquisition thereof or from the commencement of this Act, whichever is later or any extension of such period as in this section provided, and such property shall be disposed of within such period or extended period, as the case may be:

Disposal of non-banking assets.

Provided that the banking company may, within the period of seven years as aforesaid, deal or trade in any such property for the purpose of facilitating the disposal thereof:

Provided further that the Reserve Bank may in any particular case extend the aforesaid period of seven years by such period not exceeding five years where it is satisfied that such extension would be in the interests of the depositors of the banking company.

This was clause (10) of the Bill which was recast by the Select Committee with the following observation. "The use of the words 'being assets in respect of which it is not lawful under the said section for the company to transact business' is not appropriate in view of the business which banks are allowed to transact. We have therefore recast the clause so as to specify clearly what transactions banks are prohibited from carrying on"

Commencement of the Act.—See notes to s. 7 *ante*.

Prohibition of employment of managing agents and restrictions on certain forms of employment

'10. (1) No banking company—

(a) shall employ or be managed by a managing agent; or
(b) shall employ or continue the employment of any person—

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

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(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:

Provided that nothing contained in this clause shall apply to the payment of any bonus by any banking company in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business; or

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(c) shall be managed by any person—

(i) who is a director of any other company not being a subsidiary company of the banking company; or

(ii) who is engaged in any other business or vocation; or

(iii) who has a contract with the company for its management for a period exceeding five years at any one time:

Provided that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide:

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

Explanation.—For the purpose of sub-clause (iii) of clause (b), the expression 'remuneration', in relation to a person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of re-imbursing him in respect of the expenses actually incurred by him in the performance of his duties.

(2) In forming its opinion under sub-clause (iii) of clause (b) of sub-section (1), the Reserve Bank may have regard among other matters to the following:—

(i) the financial condition and history of the banking company, its size and area of operation, its resources, the volume of its business, and the trend of its earning capacity;

(ii) the number of its branches or offices;

(iii) the qualifications, age and experience of the person concerned;

(iv) the remuneration paid to other persons employed by the banking company or to any person occupying a similar position in any other banking company similarly situated; and

(v) the interests of its depositors.

(3) If any question arises in any particular case whether the remuneration is excessive within the meaning of sub-clause (iii) of clause (b) of sub-section (1), the decision of the Reserve Bank thereon shall be final for all purposes".

This new s. 10 within inverted commas was substituted for the original s. 10 by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of this Amendment Act, see N. 6 *ante*.

For rules and forms, see Rule 5 and Form I in Appendix A.

11. (1) Notwithstanding anything contained in "section 149 of the Companies Act, 1956", no banking company in existence on the commencement of this Act, shall, after the expiry of three years from such commencement or of such further period not exceeding one year as the Reserve Bank, having regard to the interests of the depositors of the company, may think fit in any particular case to allow, carry on business "in India", and no other banking company shall, after the commencement of this Act, commence or carry on business "in India", unless it has paid-up capital and reserves of such aggregate value as is hereinafter required by this section.

(2) In the case of a banking company incorporated "outside India", the aggregate value of its paid-up capital and reserves shall not be less than fifteen lakhs of rupees, and, if it has a place or places of business in the City of Bombay or Calcutta or both, twenty lakhs of rupees:

Provided that no such banking company shall be deemed to have complied with the provisions of this sub-section, unless it deposits and keeps deposited with the Reserve Bank an amount not less than the minimum required by this sub-section, either in cash or in unencumbered approved securities or partly in cash and partly in such securities.

(3) In the case of any banking company to which the provisions of sub-section (2) do not apply, the aggregate value of its paid-up capital and reserves shall not be less than—

(i) if it has places of business in more than one "State", five lakhs of rupees, and if any such place or places of business is or are situated in the City of Bombay or Calcutta or both, ten lakhs of rupees;

(ii) if it has all its places of business in one "State" none of which is situated in the City of Bombay or Calcutta, one lakh of rupees in respect of its principal place of business, *plus* ten thousand rupees in respect of each of its other places of business situated in the same district in which it has its principal place of business, *plus* twenty-five thousand rupees in respect of each place of business situated elsewhere in the "State" otherwise than in the same district:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of five lakhs of rupees:

Provided further that no banking company to which this clause applies and which has only one place of business, shall be required to have paid-up capital and reserve exceeding an aggregate value of fifty thousand rupees;

(iii) if it has all its places of business in one "State". one or more of which is or are situated in the City of Bombay or Calcutta, five lakhs of rupees, *plus* twenty-five thousand rupees in respect of each place of business situated outside the City of Bombay or Calcutta, as the case may be:

Provided that no banking company to which this clause applies shall be required to have paid-up capital and reserves exceeding an aggregate value of ten lakhs of rupees.

Explanation.—For the purposes of this sub-section, a place of business situated in a "State" other than that in which the principal place of business of the banking company is situated shall, if it is not more than twenty-five miles distant from such principal place of business, be deemed to be situated within the same "State" as such principal place of business.

(4) Any amount deposited and kept deposited with the Reserve Bank under the proviso to sub-section (2) by any banking company incorporated "outside India" shall, in the event of the company ceasing for any reason to carry on banking business "in India", be an asset of the company on which the claims of all the creditors of the company "in India" shall be a first charge.

(5) For the purposes of this section "value" means the real or exchangeable value, and not the nominal value which may be shown in the books of the banking company concerned.

(6) If any dispute arises in computing the aggregate value of the paid-up capital and reserves of any banking company, a determination thereof by the Reserve Bank shall be final for the purposes of this section.

This was clause 12 of the Bill. It follows the provisions of s. 277I (now repealed) of the Indian Companies Act, 1913 which may be compared with the more detailed provisions of the present section.

"One of the chief defects of the Indian banking system is the weak and vulnerable capital structure of the vast majority of banks, as evidenced by the fact that during the years 1943-45, no less than 715 banking companies were liquidated or wound up, most of which possessed very poor capital resources. Even the minimum of Rs. 50,000 prescribed by the Indian Companies Act for banks incorporated after the 15th January, 1937, is low as compared with many other countries, notwithstanding the lower standard of wealth of India. Another defect in the present banking system is the undue concentration of banking offices in a few cities and towns whereas a very large number of small towns have no banking facilities. Small banks with low capital have also a tendency to open branches in larger towns which have already sufficient banking facilities. Clause 12(1) seeks to remedy these defects. In the case of banking companies incorporated outside India, the provisions as regards capital do not afford any real protection, hence the safeguarding provisions of sub-clause (2)"—*Notes on Clauses.*

This clause of the Bill was re-drafted by the Select Committee and split up into the present sections 11 and 12. They did not however make any changes of substance.

Amendment—In this section at the several places the words within inverted commas except the word "value" in sub-s. (5) have been substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950.

In sub-s. (1) of this section the words "section 149 of the Companies Act, 1956" have been substituted for the words and figures "section 103 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956 which came into operation on 14th January, 1957.

Commencement of Act.—See notes to s. 7 *ante*.

See s. 149 of the Companies Act, 1956 and notes thereto.

Section not to apply to certain banking companies.—In exercise of the powers conferred by s. 53 *post* and in supersession of previous notification the Central Government has declared that the provisions of s. 11 shall not apply before 1st April, 1955 to a banking company which has been incorporated in any Part B State and which till 27th September, 1951 confined its activities to Part B States. *Vide Notification No. S. R. O. 904 of 8th March, 1954.*

Deposits.—For rules regarding deposits mentioned in this section, see Rules 6 to 10 in Appendix A.

Regulation of paid-up capital, subscribed capital and authorised capital, and voting rights of shareholders.

“12. (1) No banking company shall carry on business in India, unless it satisfies the following conditions, namely:—

(i) that the subscribed capital of the company is not less than one half of the authorised capital, and the paid-up capital is not less than one half of the subscribed capital and that, if the capital is increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;

(ii) that the capital of the company consists of ordinary shares only or of ordinary shares or equity shares and such preferential shares as may have been issued prior to the 1st day of July, 1944:

Provided that nothing contained in this sub-section shall apply to any banking company incorporated before the 15th day of January, 1937.

(2) No person holding shares in a banking company shall, in respect of any shares held by him, exercise voting rights in excess of five per cent. of the total voting rights of all the shareholders of the banking company.

(3) Notwithstanding anything contained in any law for the time being in force or in any contract or instrument no suit or other proceeding shall be maintained against any person registered as the holder of a share in a banking company on the ground that the title to the said share vests in a person other than the registered holder:

Provided that nothing contained in this sub-section shall bar a suit or other proceeding—

(a) by a transferee of the share on the ground that he has obtained from the registered holder a transfer of the share in accordance with any law relating to such transfer; or

(b) on behalf of a minor or a lunatic on the ground that the registered holder holds the share on behalf of the minor or lunatic.

(4) Every chairman, managing director or chief executive officer by whatever name called of a banking company shall furnish to the Reserve Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking

company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Reserve Bank may, by order, require and in such form and at such time as may be specified in the order”.

This new s. 12 within inverted commas was substituted for the original s. 12 by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of the Amendment Act, see N. 6 *ante*.

Penalty.—As to the penalty for contravention of this section, see s. 46(4) *post*.

“12A. (1) The Reserve Bank may, by order, require any banking company to call a general meeting of the shareholders of the company within such time, not less than two months from the date of the order, as may be specified in the order or within such further time as the Reserve Bank may allow in this behalf, to elect in accordance with the voting rights permissible under this Act fresh directors, and the banking company shall be bound to comply with the order.

Election of new directors.

(2) Every director elected under sub-section (1) shall hold office until the date upto which his predecessor would have held office, if the election had not been held.

(3) Any election duly held under this section shall not be called in question in any court.”

This new section was inserted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of the Amendment Act see N. 6 *ante*.

13. Notwithstanding anything to the contrary contained in “sections 76 and 79 of the Companies Act, 1956”, no banking company shall pay out directly or indirectly by way of commission, brokerage, discount or remuneration in any form in respect of any shares issued by it, any amount exceeding in the aggregate two and one-half per cent. of the paid-up value of the said shares.

Restriction on commission, brokerage, discount, etc., on sale of shares.

This section seeks to impose a limitation on the commission payable on the issue of shares by a bank—*Notes on Clauses*.

Amendment.—In this section the words “sections 76 and 79 of the Companies Act, 1956” have been substituted for the words and figures “sections 106 and 105A of the Indian Companies Act, 1913 (VII of 1913)” by the Banking Companies (Amendment) Act 95 of 1956.

See notes to ss. 76 and 79 of the Companies Act, 1956.

14. No banking company shall create any charge upon any unpaid capital of the company, and any such charge shall be invalid.

Prohibition of charge on unpaid capital. This section reproduces s. 277J (now repealed) of the Indian Companies Act, 1913—*Notes on Clauses.*

15. No banking company shall pay any dividend on its shares until all its capitalised expenses (including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets) have been completely written off.

Restrictions as to payment of dividend. "Payment of dividend when capitalized expenses are outstanding is against the canons of sound banking, hence the prohibition"—*Notes on Clauses.*

Sub-a. (2) of the Bill which sought to put a limit on the rate of dividend was deleted by the Select Committee with the following observation "In our opinion, the question of limitation of dividends should be considered with reference to companies generally and it is not desirable to make a separate provision for banking companies alone on this matter in anticipation of any general decision that may be arrived at. At present the subject matter of limitation of dividends is regulated by an Ordinance. We have therefore omitted sub-clause (2)."

16. (1) No banking company incorporated in India shall have as a director any person who is a director—

Prohibition of common directors.

(i) of any other banking company; or

(ii) of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of the banking company.

(2) If immediately before the commencement of the Banking Companies (Amendment) Act, 1956, any person holding office as a director of a banking company is also a director of companies which among themselves are entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the shareholders of the banking company he shall, within such period from such commencement as the Reserve Bank may specify in this behalf—

(a) either resign his office as a director of the banking company; or

(b) choose such number of companies as among themselves are not entitled to exercise voting rights in excess of twenty per cent. of the total voting rights of all the share-

holders of the banking company as companies in which he wishes to continue to hold the office of a director and resign his office as a director in the other companies."

This new s. 16 within inverted commas was substituted for the original s. 16 by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of the Amendment Act, see N. 6 *ante*.

Penalty. As to the penalty for contravention of the section, see s. 46(4).

17. Every banking company incorporated "in India" shall maintain a reserve fund, and shall, out of the net profits of each year and before any dividend is declared, transfer a sum equivalent to not less than twenty per cent. of such profits to the reserve fund until the amount of the said fund is equal to the paid-up capital.

Reserve fund.

"Explanation.—The provisions of section 349 of the Companies Act, 1956, shall apply for the purposes of computing net profits under this section as they apply for the purpose of computing net profits under section 348 of the said Act."

This section "more or less embodies sub-sections (1) and (2) of section 277K now repealed) of the Indian Companies Act (1913). Sub-section (3) of that section has been omitted in view of clause 23 of the Bill (now s. 24) which provides for a general reserve"—*Notes on Clauses.*

Amendment.—In this section the words "in India" were substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950. The new Explanation to this section within inverted commas has been substituted for the original explanation by the Banking Companies (Amendment) Act 95 of 1956.

Section not to apply to certain banking companies.—In exercise of the powers conferred by s. 53 *post*, the Central Government has declared that the provisions of s. 17 shall not apply to any banking company in so far as they have the effect of preventing appropriation from the reserve fund for the purpose of writing off the amount of losses on its investments in Government securities before declaring a dividend out of its net profits for the calendar years 1954 and 1955. *Vide Notification No. S. R. O. 3610/14. 12. 54 Gazette of India dated 25th December, 1954. Part II, Sec. 3, pages 2881-82.*

18. Every banking company not being a scheduled bank shall maintain by way of cash reserve in cash with itself, or in an account opened with the Reserve Bank, or partly in cash with itself and partly in such account, a sum equivalent to at least two per cent. of its time liabilities and five per cent. of its demand liabilities and shall file with the Reserve Bank before the fifteenth day of every month three copies of a statement of the amount so held on Friday of

Cash reserve.

BANKING COMPANIES ACT

each week of the preceding month with particulars of its time and demand liabilities on each Friday.

This section follows sub-s. (1) of s. 277L (now repealed) of the Indian Companies Act, 1913. Sub-s. (2) of s. 277L which defines the terms "demand liabilities" and "time liabilities", has been removed to s. 5—*Notes on Clauses*.

24. Cash reserve.—Where the evidence does not warrant the conclusion that an ordinary director was knowingly and wilfully a party to the default to maintain the requisite cash reserve, a conviction of such director must be set aside—*Neelakantan Nambisan* (1940) 1 M.L.J. 478

"Time and demand liabilities".—For definition see s. 5, Cl. (f) *ante*.

Penalty.—As to the penalty for contravention of this section, s. 46 (4) *post*.

19. (1) A banking company shall not form any subsidiary company except a subsidiary company formed for one or more of the following purposes, namely, the undertaking and executing of trusts, the undertaking of the administration of estates as executor, trustee or otherwise, the providing of safe deposit vaults or, with the previous permission in writing of the Reserve Bank, such other purposes as are incidental to the business of banking.

Restriction on nature of subsidiary companies

(2) Save as provided in sub-section (1), no banking company shall hold shares in any company, whether as pledgee, mortgagee or absolute owner, of an amount exceeding thirty per cent. of the paid-up share capital of that company or thirty per cent. of its own paid-up share capital and reserves, whichever is less:

Provided that any banking company which is on the date of the commencement of this Act holding any shares in contravention of the provisions of this sub-section shall not be liable to any penalty therefor if it reports the matter without delay to the Reserve Bank and if it brings its holding of shares into conformity with the said provisions within such period, not exceeding two years, as the Reserve Bank may think fit to allow.

(3) Save as provided in sub-section (1) and notwithstanding anything contained in sub-section (2), a banking company shall not, after the expiry of one year from the date of the commencement of this Act, hold shares, whether as pledgee, mortgagee or absolute owner, in any company in the management of which any managing director or manager of the banking company is in any manner concerned or interested.

"This clause is intended to prevent banks from carrying on trading activities by acquiring a controlling interest in non-banking companies. It follows the lines

of section 277M (now repealed) of the Indian Companies Act (1913) with certain modifications. The limitation on the amount of investment by a banking company in the shares of a non-banking company has been based with reference to the share capital of the banking company as well as of the company whose shares are purchased and the percentage has been reduced to 20 per cent. The words 'paid-up share capital' have been substituted for the words 'issued share capital' as the term is somewhat confusing and is used indiscriminately.

"The proviso to section 277M (2) of the Indian Companies Act (1913) has been omitted as there is no reason why the exemption made in favour of old share-holdings should be perpetuated. It is also desirable that banking companies may be allowed by the Reserve Bank a period not exceeding two years to bring their share-holding into compliance with the provision and that they should be exempted from penalty in case of purely inadvertent and temporary breaches of the provision"—*Notes on Clauses.*

The Select Committee observed: "We think that the reduction as respects the holding of shares in any company by a banking company from 40 per cent. as provided in the Indian Companies Act, 1913, to 20 per cent which was made to prevent banking companies from acquiring control over non-banking companies, would in effect unduly interfere with the legitimate business of banks and might also introduce an element of uncertainty in the credit arrangements of banks with investors and stock brokers. The majority of us are therefore of opinion that the percentage should be restored to 40."

25. Subsidiary company.—For the meaning of this expression see s. 4 of the Companies Act, 1956.

Penalty.—As to the penalty for contravention of this section, see s 46 (4).

Dates of commencement of the Act.—16th March, 1949 see notes to sub-s. (3) to s. 1 *ante*.

20. (1) Notwithstanding anything to the contrary contained in "section 77 of the Companies Act, 1956", no banking company shall make any loans or advances on the security of its own shares, or grant unsecured loans or advances to any of its directors or to firms or private companies in which it or any of its directors is interested as partner or managing agent or to any individuals, firms or private companies in cases where any of the directors is a guarantor.

(2) Every banking company shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the prescribed form and manner, showing all unsecured loans and advances granted by it to companies in which it or any of its directors is interested as director or managing agent or guarantor.

(3) If on examination of any return submitted under sub-section (2) it appears to the Reserve Bank that any loans or advances referred to in that sub-section are being granted to the

detriment of the interests of the depositors of the banking company, the Reserve Bank may, by order in writing, prohibit the banking company from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the banking company to secure the repayment of any such loan or advance within such time as may be specified in the order.

"Past failures of several banks in India have been due mostly to indiscriminate advances to directors or their concerns. An absolute and unqualified ban on such transactions would, however, result in depriving the banks of the advantage of having on their directorate important and experienced industrial magnates. A check is therefore prescribed on advances to directors and their concerns"—*Notes on Clauses.*

The Select Committee observed: "It has been represented to us that the prohibition in respect of unsecured loans made to a private company any director of which is also a director of the banking company advancing the loan would have the effect of compelling the private company to divert all its business to other quarters, and this, in our opinion, is certainly not desirable. On the other hand, we think that the prohibition should apply to any individuals, firms or private companies in cases where any of the directorates of the banking company is a guarantor." They accordingly amended the last portion of sub-s (1) of this section.

Amendment.—In sub-s. (1) of this section the words and figures within inverted commas have been substituted for the words and figures "section 54A of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

See s. 77 of the Companies Act, 1956 and notes thereto.

21. (1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

Power of Reserve Bank to control advances by banking companies.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to the purposes for which advances may or may not be made, the margins to be maintained in respect of secured advances and the rates of interest to be charged on advances,

and each banking company shall be bound to comply with any directions as so given.

This section was introduced by the Select Committee with the following observation: "We think it desirable that the Reserve Bank should be given powers to give directions to banks in regard to their lending policies so that, where necessary, credit facilities may be controlled with a view to checking speculation or rising prices."

22. (1) Save as hereinafter provided, no company shall carry on banking business "in India" unless it holds a licence granted by the Reserve Bank in such behalf.

Licensing of banking companies.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business "in India", shall apply in writing to the Reserve Bank for a licence under this section:

Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of sub-section (2) or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that all or any of the following conditions are fulfilled, namely:—

(a) that the company is in a position to pay its depositors in full as their claims accrue;

(b) that the affairs of the company are not being conducted to the detriment of the interests of its depositors;

(c) in the case of a company incorporated "outside India" that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered "in India", and that the

company complies with all the provisions of this Act, applicable to banking companies incorporated "outside India".

(4) The Reserve Bank may—

(a) cancel any licence granted under this section where any of the conditions set out in sub-section (3), on the fulfilment of which it required to be satisfied when granting the licence, ceases to be fulfilled or if the company ceases to carry on banking business "in India" or goes into liquidation;

(b) at any time after granting a licence under this section require that any of the said conditions, on the fulfilment of which it did not require to be satisfied when granting the licence, shall be fulfilled to its satisfaction within such time as it may specify, and if the condition is not so fulfilled, cancel the licence.

(5) Any banking company aggrieved by the cancellation of its licence under sub-section (4) may appeal to the Central Government, and the decision of the Central Government on such appeal shall be final.

This was clause 21 of the Bill "When the Reserve Bank's original 'proposals for Indian Bank Act' were circulated in 1940, suggestions were received that a system of licensing foreign banks doing business in the Provinces of India should be introduced. The Banking Inquiry Committee had also recommended that banks should be required to take out licenses from the Reserve Bank, such licenses being granted freely to the existing banks." This section seeks to introduce a comprehensive system of licensing of banks by the Reserve Bank, the grant of the license being dependent upon the maintenance of a satisfactory financial condition subject to the further qualification in the case of foreign banks that their country of origin does not discriminate in any manner against banks registered in the provinces of India—*Notes on Clauses*.

As a matter of drafting the Select Committee recast sub-ss. (1) and (2).

Amendments.—In this section at the several places the words within inverted commas have been substituted for other words by the Banking Companies (Amendment) Act, 1950, read with the Adaptation of Laws Order, 1950.

25A. Scope. This section impliedly authorises the company to carry on its business other than banking business with a view to pay off its deposit—*In re Union Bank of Bengal* (1955) N.U.C. 2907 (Cal).

26 Branch office.—Although a branch bank is in fact an agency of the principal bank, the former has often been regarded as distinct for many special purposes. For instance, it has been regarded in law as distinct from the parent body or the head office in the matter of estimating the time by which notice of dishonour should be given or in the matter of refusing payment of a customer's cheque except on that particular branch where he keeps his accounts—*Hansraj v. Indian Overseas Bank* (1956) C. 33, 59 C.W.N. 1044 relying on *Prince v. Oriental Bank Corporation* (1878) 3 App. Cas. 325.

Rule.—For rule prescribed under this section, see Rule 11 in Appendix A

Commencement of the Act.—16th March, 1949 [see notes to sub-s. (3) of s. 1 *ante.*]

27. Sub-s. (1) not to apply to certain banking companies.—In exercise of the powers conferred by s. 53 *post* and in supersession of previous notification the Central Government has declared that s. 22(1) shall not apply to a banking company—(a) which has been incorporated in Part B State; (b) which till 27th September, 1951 carried on banking business in a Part B State; and (c) which applied to the Reserve Bank for a license under s. 22(1) on or before 31st March, 1952, until the date of which such banking company is granted a license under s. 22(2) or is by notice in writing informed by the Reserve Bank that a license can not be granted to it—*Vide Notification No. S.R.O. 2172 of 16th November, 1953.*

Penalty.—As to the penalty for contravention of the section, see s. 46 (4) *post*.

23. “No banking company shall open a new place of business in any part of India or change, otherwise than within the same city, town or village, the location of an existing place of business situated in any part of India, and no banking company incorporated in India shall open a new place of business outside India or change, otherwise than within the same city, town or village in any country or area outside India, the location of an existing place of business situated in that country or area without first obtaining the prior permission in writing of the Reserve bank”; and before giving any such permission the Reserve Bank may require to be satisfied by an inspection under section 35 or otherwise as to the financial condition and history of the company, the general character of its management, the adequacy of its capital structure and earning prospects and that public interest will be served by the opening or, as the case may be, change of location, of the place of business:

Restrictions on opening of new, and transfer of existing, places of business.

Provided that nothing in this section shall apply to the opening for a period not exceeding one month of a temporary place of business within a city, town or village or the environs thereof within which the banking company already has a place of business for the purpose of affording banking facilities to the public on the occasion of an exhibition, conference or *melá*.

Explanation.—For the purposes of this section “place of business” includes any sub-office, pay-office, sub-pay-office and any place of business at which deposits are received, cheques cashed or moneys lent.

This was clause 22 of the Bill. This section is based on the provisions of sub-ss. (1) and (2) of s. 3 of the Banking Companies (Restriction of Branches) Act, 1946 (now repealed)—*Notes on Clauses.*

Amendment.—In the beginning of this section the words within inverted commas were substituted for other words by the Banking Companies (Amendment) Act, 1950.

Penalty. As to the penalty for contravention of the section, see s. 46(4) *post*.

Rules.—For rules prescribed under this section, see Rules 12 and 13 in Appendix A.

24. (1) After the expiry of two years from the commencement of this Act, every banking company shall maintain in cash, gold or unencumbered approved securities, valued at a price not exceeding the current market price, an amount which shall not at the close of business on any day be less than twenty per cent. of the total of its time and demand liabilities “in India”.

Maintenance of a percentage of assets.

Explanation.—For the purposes of this section liabilities shall not include the paid-up capital or the reserves or any credit balance in the profit and loss account of the company or the amount of any loan taken from the Reserve Bank.

(2) In computing the amount for the purposes of sub-section (1), the deposit required under the proviso to sub-section (2) of section 11 to be made with the Reserve Bank by a banking company incorporated “outside India” and any balance maintained by a banking company with the Reserve Bank or its agent or both, including in the case of a scheduled bank the balance required under “section 42” of the Reserve Bank of India Act, 1934 (II of 1934), to be so maintained, shall be deemed to be cash maintained.

(3) For the purpose of ensuring compliance with the provisions of this section, every banking company shall, not later than fifteen days after the end of the month to which it relates, furnish to the Reserve Bank in the prescribed form and manner a monthly return showing particulars of its assets maintained in accordance with this section, and its time and demand liabilities at the close of business on each Friday during the month, or if any Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

This was clause 23 of the Bill “This clause is an attempt to prescribe by law what has already been recognised as sound banking practice, viz., that a bank should keep a reserve of cash and liquid assets to meet its demand liabilities. One of the worst defects of Indian banking is the propensity of the smaller banks to overtrade at the expense of liquidity and it seems best to insist on all banks maintaining a reasonably large proportion of this cover in the form of cash or trustee securities as defined in the Indian Trusts Act, excluding immovable pro-

perty. The proportion of 20 per cent. is in accordance with the actual practice followed by smaller banks"—*Notes on Clauses.*

The Select Committee redrafted sub-s. (1) and in sub-s. (2) they added the words "or its agents or both", so that balances maintained with any agent of the Reserve Bank may also be regarded as part of the liquid assets.

Commencement of the Act.—16th March, 1949. See notes to sub-s. (3) of a 1 ante.

Amendment.—In sub-s. (1) of this section the words within the first inverted commas were substituted for other words by the Banking Companies (Amendment) Act, 1950, read with the Adaptation of Laws Order, 1950. In sub-s. (2) for "sub-section (1) of section 42", "section 42" has been substituted by the Reserve Bank of India (Amendment) Act 38 of 1956.

27A. S. 24 not to apply to any banking company for a further period of 1 year from 9th June, 1953.—In exercise of powers conferred by s 53 *post* the Central Government has declared in continuation of Notification No. F. 4(121)—F 1/5 dated 10th May, 1952, that the provisions of 24 shall not apply to any banking company for a further period of 1 year from 9th June, 1953, in so far as they - (a) require the inclusion of borrowing by the banking company from the Imperial Bank of India in computing the time and demand liabilities in India of the banking company; and (b) preclude the maintenance by the banking company of the amount specified in that section in the form of approved securities which are lodged with another institution for an advance or other credit arrangement, such securities being valued at a price not exceeding the current market price less the extent to which they have been drawn against or credit arrangement in regard to them have been availed of. *Vide Notification No. F. 4(121)—F 1/51 of 20th May, 1953.*

Concession regarding maintenance of cash reserves by banks incorporated in the State of Travancore-Cochin and whose activities are confined to that State, from 1st April, 1954 to 31st March, 1955. See Notification No S R O. 967 of 16th March, 1954.

Form.—For the form prescribed under this section, see Form X in Appendix A.

Penalty.—As to the penalty for contravention of the section, see s. 46(4) *post*.

25. (1) The assets "in India" of every banking company at the close of the last working day of every quarter shall not be less than seventy-five per cent. of its demand and time liabilities therein.

Assets "in India".

(2) Every banking company shall, within one month from the end of every quarter, submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) as at the close of the last working day of the previous quarter.

(3) For the purposes of this section,—

"(a) 'assets in India' shall be deemed to include export bills drawn in, and import bills drawn on and payable in, India and expressed in such currencies as the Reserve Bank may from time to time approve in this behalf and also such

securities as the Reserve Bank may approve in this behalf, notwithstanding that all or any of the said bills or securities are held outside India”;

(b) “quarter” means the period of three months ending on the last day of March, June, September or December.

This was clause 24 of the Bill. “The failure of a bank incorporated outside the Provinces of India which had the bulk of its deposits from the Provinces but the greater part of the assets outside the Provinces has brought out the necessity of protecting the interests of depositors in Indian Provinces by requiring such banks to maintain a reasonable proportion of their liability in the Provinces of India in the form of assets in the Provinces. Export bills are included in such assets with a view to helping Indian exports”—*Notes on Clauses*.

In this section the Select Committee made some small drafting amendments, and in the definition of “assets” they included import bills drawn on and payable in India.

Amendments.—In sub-s (3) of this section the new clause (a) within inverted commas was substituted for the original clause (a) by the Banking Companies (Amendment) Act, 1950. In sub-s. (1) the words within inverted commas were substituted for other words by the aforesaid Act read with the Adaptation of Laws Order, 1950.

27B. Exemption.—The Central Government has declared that for a period of six months with effect from the 16th March, 1949 (the date of coming into force of the Act) the provisions of this section shall not apply to the following banking companies, namely:—(1) New Bank of India, Ltd., (2) Trader's Bank, Ltd., (3) Lakshmi Commercial Bank, Ltd., (4) Punjab and Kashmir Bank, Ltd., (5) Prabhat Bank Ltd., (6) Chawla Bank, Ltd., (7) Punjab Commerce Bank, Ltd. (8) Frontier Bank, Ltd., (9) First National Bank, Ltd., (10) Commercial Bank of India, Ltd., (11) National Bank of Sialkot, Ltd., (12) Colony Bank, Ltd.

The aforesaid exemption has been granted to mitigate the hardships of the displaced banks.

27C. Reserve Bank's power.—If a banking company fails to comply with ss. 24 and 25, the Reserve Bank shall by notice in writing make a demand on the company to comply with the said provisions, within 30 days from the receipt of the notice and on default the Reserve Bank may apply under s. 38 for winding up the company [sub-s. (5) of s. 46]

28. Currencies approved under s. 25(3).—In pursuance of sub-s. (3) of this section read with sub-rule (1) of rule 14 of the Banking Companies Rules, 1949, the Reserve Bank has approved the undernoted currencies as currencies in which export bills drawn in and import bills drawn on and payable in India may be expressed for the purposes of s. 25—1. Rupee. 2. Sterling. 3. U. S. dollar. 4. Currency of the country of final destination of the goods in the case of the following countries:—Belgian Monetary Area (Belgium, Luxemburg, Belgian Congo and Ruanda Urundi); Canada including Newfoundland, Denmark (including Faroe Islands) and Greenland; Dutch Monetary Area (Netherlands and Netherlands West Indies); French Franc Area (i.e., Metropolitan France, the French Overseas Empire excluding French possessions in India); French Somali Coast;

Norway; Portuguese Monetary Area (Portugal and the Portuguese Empire excluding Portugal possessions in India); Sweden; Switzerland and Liechtenstein.

Rule.—For rule prescribed under this section, see Rule 14 in Appendix A.

26. Every banking company shall, within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts “in India” which have not been operated upon for ten years, giving particulars of the deposits standing to the credit of each such account:

Return of unclaimed deposits.

Provided that in the case of money deposited for a fixed period the said term of ten years shall be reckoned from the date of the expiry of such fixed period.

This was clause 25 of the Bill. “The intention in prescribing an annual return of deposits which remain unclaimed for 10 years is to enable the Reserve Bank to have the necessary data for consideration of the question whether deposits remaining unclaimed for a prescribed period should be transferred to Government making it responsible for meeting any claim which may be established in future. Similar returns are called for, in the banking legislation of Canada, and it is provided there that after the lapse of a certain period of years the deposits will be paid over to Government”— *Notes on Clauses*.

Amendment.—In this section the words within inverted commas have been substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950.

27. (1) Every banking company shall before the close of the month succeeding that to which it relates submit to the Reserve Bank a return in the prescribed form and manner showing its assets and liabilities “in India” as at the close of business on the last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XVI of 1881), at the close of business on the preceding working day.

Monthly returns and power to call for other returns and information

“(2) The Reserve Bank may at any time direct a banking company to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of the banking company (including any business or affairs with which such banking company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purposes of this Act, and without prejudice to the generality of the foregoing power may call for information every half-year regarding the classification of

advances and investments of banking companies in respect of industry, commerce and agriculture."

This was clause 26 of the Bill. "The existing return under section 42 of the Reserve Bank Act applies to scheduled banks and also omits important details like investments. For an adequate control of banking development, it is necessary that the Reserve Bank should have a full picture of the banking situation of the country through periodical returns of assets and liabilities. It is also desirable in order that the Reserve Bank may be able to discharge its responsibilities as the Central Bank of the country that it should be authorised to call for information relating to their business from banks"—*Notes on Clauses*.

Amendment.—In sub-s. (1) of this section the words within inverted commas were substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950. For the original sub-s. (2) the new sub-s. (2) within inverted commas was substituted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. *Vide S.R.O. 231 dated 11. 1. 1957 in Gazette of India dated 19. 1. 1957, Part II, sec. 3, p. 178.* For the Objects and Reasons of the Amendment Act see "Subsequent Amendments."

Rules.—For the rules relating to submission of returns, see Rules 3 and 4, Appendix A.

Penalty.—As to the penalty for contravention of the section, see s. 46(4) *post*.

28. The Reserve Bank, if it considers it in the public interest so to do, may publish any information obtained by it under section 27 in such consolidated form as it thinks fit.

Power to publish information.

This was clause 27 of the Bill. "It is desirable to authorise the Reserve Bank to publish in a consolidated form the information obtained by it under clause 26 (now s. 27) if it considers such publication in the public interest"—*Notes on Clauses*.

29. (1) At the expiration of each calendar year every banking company incorporated "in India", in respect of all business transacted by it, and every banking company incorporated "outside India", in respect of all business transacted through its branches "in India", shall prepare with reference to that year a balance-sheet and profit and loss account as on the last working day of the year in the Forms set out in the Third Schedule or as near thereto as circumstances admit:

Accounts and balance-sheet.

Provided that in the case of a banking company incorporated "outside India" the profit and loss account may be prepared as on a date not earlier than two months before the last working day of the year.

(2) The balance-sheet and profit and loss account shall be signed—

(a) in the case of a banking company incorporated "in India", by the manager or the principal officer of the company and where there are more than three directors of the company, by at least three of those directors, or where there are not more than three directors, by all the directors, and

(b) in the case of a banking company incorporated "outside India" by the manager or agent of the principal officer of the company "in India".

(3) Notwithstanding that the balance-sheet of a banking company is under sub-section (1) required to be prepared in a form other than the form "set out in Part I of Schedule VI to the Companies Act, 1956", the requirements of that Act relating to the balance-sheet and profit and loss account of a company shall, in so far as they are not inconsistent with this Act, apply to the balance-sheet or profit and loss account, as the case may be, of a banking company.

(4) The Central Government, after giving not less than three months' notice of its intention so to do by a notification in the official Gazette, may from time to time by a like notification amend the Forms set out in the Third Schedule.

This was clause 28 of the Bill "The Form F, laid down by the Indian Companies Act (1913) is meant for companies in general and is not suited to the special requirements of banking companies. Many of the smaller banks publish their balance sheets in different forms and there is no uniformity of presentation. The banks also close their books on different dates making it difficult to have a picture of the banking situation of the country as on a particular date. The Central Banking Inquiry Committee, which considered this question in detail, recommended a separate form for banking companies. As regards banks incorporated outside the Provinces of India, there is no provision in the Companies Act for the publication of separate balance-sheets of their Indian business. In Forms A and B of the Schedule to the Banking Companies Bill, an attempt has been made to provide a form of balance-sheet and profit and loss account specially suitable for banking companies"—*Notes on Clauses.*

Amendments.—In sub-ss (1) and (2) of this section the words within inverted commas at the several places were substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950.

In sub-s (3) the words within inverted commas have been substituted for the words and figures "marked F in the third schedule to the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act, 1956

Rule.—For rule prescribed under this section, see Rule 15 in Appendix A.

30. (1) The balance-sheet and profit and loss account prepared in accordance with section 29 shall be audited—

Audit.

(a) in the case of a banking company incorporated "in India", by a person duly qualified under any law for the time being in force to be an auditor of companies;

(b) in the case of a banking company incorporated "outside India", either by such an auditor as aforesaid, or by a person duly qualified to be an auditor under the law of the country in which the company is incorporated.

(2) The Auditor shall have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by "section 227 of the Companies Act, 1956".

(3) In addition to the matters which under the aforesaid Act the auditor is required to state in his report, he shall, in the case of a banking company incorporated "in India", state in his report,—

(a) whether or not the information and explanations required by him have been found to be satisfactory;

(b) whether or not the transactions of the company which have come to his notice have been within the powers of the company;

(c) whether or not the returns received from branch offices of the company have been found adequate for the purposes of his audit;

(d) whether the profit and loss account shows a true balance of profit and loss for the period covered by such account;

(e) any other matter which he considers should be brought to the notice of the shareholders of the company.

This was clause 29 of the Bill. This section provides for the audit of the statements prescribed under s. 29—*Notes on Clauses*.

Auditors.—See ss. 224, 226 and 227 of the Companies Act 1956 and notes thereto.

Amendments.—In this section the words within inverted commas at the several places were substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950. In sub-s. (2) of this section the words within inverted commas have been substituted for the words and figures "section 145 of the Indian Companies Act, 1913 (VII of 1913) by the Banking Companies (Amendment) Act 95 of 1956.

31. The accounts and balance-sheet referred to in section 29 together with the auditor's report shall be published in the prescribed manner, and three copies thereof shall be furnished as returns to the Reserve

Submission of returns.

Bank within three months from the end of the period to which they refer:

Provided that the Reserve Bank may in any case extend the said period of three months for the furnishing of such returns by a further period not exceeding three months.

This was clause 30 of the Bill. "At present, some of the banks publish their balance-sheets after a considerable period from the date to which they relate so that the position of the banks remain unknown for an unduly long period. The clause remedies this defect—*Notes on Clauses.*

29. **Penalty.**—Whosoever in any return, balance-sheet or other document wilfully makes a false statement or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine [s. 46(1).]

32. (1) Where a banking company in any year furnishes its balance-sheet and accounts in accordance with the provisions of section 31 it may, or when it is a private company, shall, at the same time send to the registrar three copies of such balance-sheet and accounts and of the auditor's report, and where such copies are so sent, it shall not be necessary for the company, to file copies of the balance-sheet and accounts with the registrar as required by sub-section (1) of "section 220 of the Companies Act, 1956"; and such copies so sent shall be chargeable with the same fees and shall be dealt with in all respects as if they were filed in accordance with that section.

(2) When in pursuance of sub-section (2) of section 27 the Reserve Bank requires any additional statement or information in connection with the balance-sheet and accounts furnished under section 31, the banking company shall, when supplying such statement or information, send a copy thereof to the registrar.

This was clause 31 of the Bill. This section is based on s. 17 of the Insurance Act, 1938.

Amendment.—In sub-s. (1) of this section the words within inverted commas have been substituted for the words and figures "section 134 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

33. Every banking company incorporated "outside India" shall, not later than the first Monday in August of any year in which it carries on business, display in a conspicuous place in its principal office and in every branch office "in India" a copy of its last audited balance-sheet and profit and

Display of audited balance-sheet by companies incorporated "outside India".

loss account prepared under section 29, and shall keep the copy so displayed until replaced by a copy of the subsequent balance-sheet and profit and loss account so prepared, and every such banking company shall display in like manner copies of its complete audited balance-sheet and profit and loss account relating to its banking business as soon as they are available, and shall keep the copies so displayed until copies of such subsequent accounts are available.

This was clause 32 of the Bill. "There is no provision in the Indian Companies Act (1913) for the publication of balance-sheets by banking companies incorporated outside the Provinces of India similar to that contained in section 136 applicable to companies incorporated in the Provinces of India. This clause provides for uniformity of treatment as regards the publication of balance-sheets"—*Notes on Clauses.*

Compare s. 136 of the Indian Companies Act, 1913 (now s. 223 of the Companies Act, 1956).

Amendment.—In this section the words within inverted commas were substituted for other words by the Banking Companies (Amendment) Act, 1950 read with the Adaptation of Laws Order, 1950.

34. Nothing in this Act shall apply to the preparation of accounts by a banking company and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act.

Accounting provisions of this Act not retrospective.

This was clause 33 of the Bill. This section provides for the period of transition and follows section 17A of the Insurance Act, 1938—*Notes on Clauses.*

Commencement of the Act.—16th March, 1949. See notes to sub-s. (3) of s. 1 *ante*.

35. (1) Notwithstanding anything to the contrary contained in "section 235 of the Companies Act, 1956", the Reserve Bank at any time may, and on being directed so to do by the Central Government shall, cause an inspection to be made by one or more of its officers of any banking company and its books and accounts; and the Reserve Bank shall supply to the banking company a copy of its report on such inspection.

Inspection.

(2) It shall be the duty of every director or other officer of the banking company to produce to any officer making an inspection under sub-section (1) all such books, accounts and other documents in his custody or power and to furnish him

with any statements and information relating to the affairs of the banking company as the said officer may require of him within such time as the said officer may specify.

(3) Any person making an inspection under sub-section (1) may examine on oath any director or other officer of the banking company in relation to its business, and may administer an oath accordingly.

(4) The Reserve Bank shall, if it has been directed by the Central Government to cause an inspection to be made, and may, in any other case, report to the Central Government on any inspection made under this section, and the Central Government, if it is of opinion after considering the report that the affairs of the banking company are being conducted to the detriment of the interests of its depositors, may, after giving such opportunity to the banking company to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing—

(a) prohibit the banking company from receiving fresh deposits;

(b) direct the Reserve Bank to apply under section 38 for the winding up of the banking company:

Provided that the Central Government may defer, for such period as it may think fit, the passing of an order under this sub-section, or cancel or modify any such order, upon such terms and conditions as it may think fit to impose.

(5) The Central Government may, after giving reasonable notice to the banking company, publish the report submitted by the Reserve Bank or such portion thereof as may appear necessary.

This was clause 34 of the Bill. "The opinion received on the Reserve Bank's 'proposal for an Indian Bank Act', circulated in 1940 revealed that public opinion was generally in favour of the inspection of banks by Government or the Reserve Bank. In view of this and in the light of the experience gained by the Reserve Bank in connection with the inspection of banks for the purposes of section 42 (6) of the Reserve Bank Act, provision has been made for the inspection of a bank's books by the Reserve Bank on its own initiative or at the instance of the Central Government. Sub-clause (1) generally follows the lines of section 3 of the Banking Companies (Inspection) Ordinance, 1946 and sub-clauses (2) and (3) make necessary provisions for securing that the directors and officers of the bank furnish all information and documents requisite for a proper investigation of its affairs. Sub-clauses (4) and (5) enumerate the corrective measures which the Central Government may take"—*Notes on Clauses.*

Sub-s. (2). Penalty.—As to the penalty for contravention of sub-s. (2), see s. 46 (2) *post.*

Sub-s. (4), cl. (a). Penalty.—As to the penalty for contravention of cl. (a) of sub-s. (4) of this section, see sub-s. (3) of s. 46 *post*.

Amendment.—In sub-s. (1) of this section the words and figures within inverted commas have been substituted for the words and figures "section 138 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

See s. 235 of the Companies Act, 1956 and notes thereto.

"35A. (1) Where the Reserve Bank is satisfied that—

(a) in the national interest; or
 (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

Power of the Reserve Bank to give directions.

(c) to secure the proper management of any banking company generally;

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

This section and s. 35B were inserted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of the Amendment Act, see N. 6 "Subsequent Amendments".

"35B. (1) In the case of a banking company—

(a) no amendment of any provision relating to the appointment or re-appointment or remuneration of a managing or whole time director or of a director not liable to retire by rotation or of a manager or a chief executive officer by whatever name called, whether that provision be contained in the company's memorandum or articles of association, or

Amendment of provisions relating to appointments of managing directors etc. to be subject to previous approval of the Reserve Bank.

in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors shall have effect unless approved by the Reserve Bank;

(b) no appointment or re-appointment of a managing or whole time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment or re-appointment is made with the previous approval of the Reserve Bank.

(2) Nothing contained in sections 268, 269, 310, 311 and 388 (in so far as section 388 makes the provisions of sections 310 and 311 apply in relation to the manager of a company) of the Companies Act, 1956, shall apply to a banking company after the commencement of the Banking Companies (Amendment) Act, 1956.

(3) No act done by a person as a managing or whole-time director or a director not liable to retire by rotation or a manager or a chief executive officer by whatever name called, shall be deemed to be invalid on the ground that it is subsequently discovered that his appointment had not taken effect by reason of any of the provisions of this Act; but nothing in this sub-section shall be construed as rendering valid any act done by such person after his appointment has been shown to the banking company not to have had effect”.

See notes to s. 35A, *supra*.

Sub-s. (2).—The Banking Companies (Amendment) Act, 1956 came into force on 14th January, 1957 *Vide S R O 231 dated 11. 1. 1957 in Gazette of India dated 19 1. 1957 page 178.*

Further powers and
functions of Reserve
Bank.

36. (1) The Reserve Bank may—

(a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions, and generally give advice to any banking company;

(b) on a request by the companies concerned and subject to the provisions of section 45, assist, as intermediary or otherwise, in proposals for the amalgamation of such banking companies;

(c) give assistance to any banking company by means of the grant of a loan or advance to it under clause (3) of sub-section (1) of section 18 of the Reserve Bank of India Act, 1934 (II of 1934);

“(d) during the course, or after completion, of any inspection of a banking company under section 35, by order in writing and on such terms and conditions as may be specified therein—

BANKING COMPANIES ACT

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company, or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to watch the proceedings at any meeting of the Board of directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it;

(iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices and branches are being conducted and make a report thereon;

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary in consequence of the state of affairs disclosed during or by the inspection".

(2) The Reserve Bank shall make an annual report to the Central Government on the trend and progress of banking in the country, with particular reference to its activities under clause (2) of section 17 of the Reserve Bank of India Act, 1934, including in such report its suggestions, if any, for the strengthening of banking business throughout the country

(3) The Reserve Bank may appoint such staff at such places as it considers necessary for the scrutiny of the returns, statements and information furnished by banking companies under this Act, and generally to ensure the efficient performance of its functions under this Act,

This was clause 35 of the Bill. "This clause sets out further duties and functions of the Reserve Bank in its relations with banking concerns and empowers the Reserve Bank to have full information about the working of banks and to have the authority to be able to render timely and adequate help when necessary. A provision has also been made for an annual review of the Reserve Bank on the progress of banking throughout the country"—*Notes on Clauses*.

Amendment.—For the original cl (d) of sub-s. (1) the new cl. (d) within inverted commas was substituted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of the Amendment Act, see N. 6 under "Subsequent Amendments."

PART III

SUSPENSION OF BUSINESS AND WINDING UP OF BANKING COMPANIES

N.B. The Amendments made in sections contained in Parts III and IIIA by the Banking Companies (Amendment) Act 95 of 1956 shall not apply to a banking company the winding up of which commenced before 1st April, 1956.—See the proviso to s. 14 of the *afore-said* Act 95 of 1956.

"36A. In this Part and in Part IIIA, 'High Court' in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated".

This new section has been inserted by the Banking Companies (Amendment) Act 52 of 1953.

"In Parts III and IIIA, the expression 'High Court' has been used. Its jurisdiction has been defined in ss. 45B, 45C and 45J. The High Court shall have exclusive jurisdiction to deal with three distinct classes of cases—

- (a) proceedings in relation to suspension of business of banks;
- (b) winding up proceedings and questions which relate to or arise in the course of the winding up of the banking company whether such question has arisen or arises before or after the winding up order;
- (c) schemes of compromise or arrangement under s. 153 of the Indian Companies Act, 1913.

Under s. 45J, the High Court will have jurisdiction to try all offences under the Banking Companies Act as also under the Indian Companies Act. Under s. 45B, it has been provided that all proceedings, whether civil or criminal, pending in any court, other than the High Court, shall be automatically stayed as soon as the Act comes into force. The High Court may transfer to itself such of

the proceedings as it thinks fit. Cases which are not transferred to the High Court shall be continued in the Court in which they are pending"—*Notes on Clauses.*

37. (1) The "High Court" may on the application of a banking company which is temporarily unable to meet its obligations make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted:

Provided that the "High Court" may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the "High Court" shall call for a report from the Reserve Bank on the affairs of the banking company, on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.

"(3) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company".

This was clause 36 of the Bill. This section is a modification of s. 277N of the Indian Companies Act, the period of moratorium having been limited to six months. It is the intention that the report under sub-s. (2) should be submitted by the Reserve Bank—*Notes on Clauses.*

The Select Committee observed. "We think where the Court acts *suo motu* under the proviso to sub-clause (2) it should be required to call for a report from the Reserve Bank on receipt of which any order already passed may either be rescinded or modified." They accordingly amended the proviso to sub-s. (2).

Amendments.—In this section and the subsequent sections of this Part the word "Court" in several places has been replaced by the words "High Court" by the Banking Companies (Amendment) Act 52 of 1953. By the same Act the new sub-s. (3) has also been inserted. "The appointment of special officer to take into his custody or under his control all the assets, books and documents of a banking company

which has applied for suspension of business is considered necessary in the interests of the depositors in order to prevent persons with access to the banking company's records from concealing relevant books or altering entries therein"—*Notes on Clauses.*

29A. Scope:—The fact that the directors and the chairman of a banking company are actuated by the best of motives and they think and hope that their arrangements are those best suited to meet the liabilities of the company, is no ground in law for passing an order under this section, unless the Court really is satisfied that the position of the company is embarrassed only temporarily. It was never the intention of the legislature in enacting this section that a company in an insolvent position should be allowed to continue its operation under the protection of the Court and that those who had dealings with the company should be prevented under the orders of the Court from seeking legal remedies to which they would otherwise have been entitled—*Banarès Bank* (1939) A. 726.

This section was not intended to refer to cases where the company requires a long time within which to pay up its creditors and where the situation is such that the company, in order to meet the demands of its creditors, will have to realize most, if not all, of its assets. The section makes it plain that an order can be made only in the case of a banking company which is temporarily unable to meet its difficulties. It must be established to the satisfaction of the Court that the difficulties can be got over — *Bank of Calcutta* (1948) 53 C.W.N. 124. In the last cited case at p. 128 Clough, J. has held that in the absence of a report from the registrar such as the section contemplates, it is not open to the Court to make an order for *moratorium*.

30. Moratorium:—Normally, a banking company is not entitled to a moratorium under this section unless along with the application praying for such moratorium it files a report of the Reserve Bank indicating that it will be able to pay its debts. The proviso to sub-s. (2) of this section gives power to the Court, for sufficient reasons, to grant such an application even without the report of the Reserve Bank; but this power should be exercised in special cases for strong reasons—*Vastulal v. Mulchand* (1955) N.U.C. 4680 (Raj.). In the last cited case the application for moratorium was not accompanied by of the Reserve Bank's report which was unfavourable, and the major portion of the assets of the banking company were advances which were not likely to be recovered by suits within the period of 6 months. So it was held that it was not a fit case for the grant of a moratorium.

31. "Report of the registrar":—The object of obtaining the report of the registrar is to inform the Court of the financial position of the company and to satisfy it that the company's difficulties are temporary and such as will be overcome if some time is given—*Bank of Calcutta* (1948) 53 C.W.N. 124.

32. Jurisdiction:—There is no jurisdiction conferred on the Dacca High Court by this section enabling it to make an order for a moratorium when the application is made to it by an unregistered company. Where a banking company having a registered office in India and a branch in East Bengal applies under this section for a moratorium in India, the Dacca High Court will have inherent jurisdiction under the Letters Patent of 1865 and under the Charter establishing the Supreme Court in 1774 to pass orders by way of ancillary relief to ensure smooth and just working of the administration of the affairs of the company in East Bengal in connection with the orders in the main proceedings in the Court

in India. But this does not mean that the right to relief in the Dacca High Court will be automatic on mere proof of the passing of a principal order by the Court in India, and the merits of the claim to relief under this section have to be considered by the Dacca High Court independently—*Bank of Commerce* (1949) Dacca 23, 52 C.W.N. (1 D.R.) 126.

38. (1) Without prejudice to the provisions contained in "section 433 or section 583 of the Companies Act, 1956", and Winding up by "High Court". without prejudice to its powers under section 37, the "High Court" shall order the winding up of a banking company if it is unable to pay its debts and the "High Court" shall also order the winding up of a banking company if the Reserve Bank applies in this behalf to the "High Court".

(2) The Reserve Bank may make an application under this section only if it is directed so to do by order under clause (b) of sub-section (4) of section 35 or if the banking company has failed to comply within due time with the demand contained in a notice under sub-section (5) of section 46.

(3) Without prejudice to the provisions contained in "section 434 of the Companies Act, 1956", a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand for payment made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(4) A copy of every application by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the registrar.

This was clause 37 of the Bill "The provisions of the Indian Companies Act in respect of liquidation do not seem to be suitable for banking companies. A bank's business is conducted on an over-the-counter basis and it is important that current accounts should be withdrawable at any time and drafts etc. should be honoured on presentation, otherwise great business dislocation is likely to result. A provision has, therefore, been made under this clause for the winding up of a banking company if it refuses to meet a lawful demand for payment at one of its offices or branches within two working days, if such demand is made at a place where there is an office or branch or agency of the Reserve Bank, or within five working days elsewhere. This clause also authorises the Reserve Bank to apply for the liquidation of a banking company if it appears from the results of an inspection made under clause 34 (now s. 35) that its affairs are being conducted to the detriment of the interests of its depositors"—*Notes on Clauses*.

Amendments.—See notes to s. 37 under the heading "Amendment." In sub-ss. (1) and (3) of this section the words (other than "High Courts") within inverted

commas have been substituted for other words by the Banking Companies (Amendment) Act 95 of 1956.

33. Scope. Sub-s. (1).—The provisions of sub-s. (1) are not restrictive of provisions of ss. 162 and 271 of the Companies Act, 1913.—*Federal Bank of India v. Durga Das* (1954) Punj. 21.

This sub-section is most clumsily drafted. The only reasonable and sensible meaning that can be spelt out of it is that the opening words preserve the discretion of the Court only in cases specified in cls (i) to (iv) and (vi) of s. 162 of the Companies Act, 1913, but so far as cl. (v) is concerned, namely a case where a company is unable to pay its debts, the provisions of s. 38(1) must prevail in the case of a banking company—*Dwarkanadas v. Dharam Chand* (1954) C. 583 (per Chakravarti C.J. and Sarkar J.).

S. 38(1) does not repeal s. 153 of the Companies Act, 1913. There is no inconsistency between them. S. 38(1) is in addition to the provisions of ss. 162 and 271 of the Companies Act, 1913. Clearly s. 38 does not touch the powers of the Court to sanction a scheme of arrangement between a banking company and its creditors or any class of them, or between such company and its members or any class of them, if that scheme of arrangement or compromise is covered by s. 153 of the Companies Act, 1913—*Dalip Singh v. First National Bank* (1952) Punj. 158. But see notes under s. 45.

34. "Without prejudice to its powers under s. 37".—The effect of the insertion of these words is that the obligation lying on the Court to direct a winding up of a banking company in the circumstances stated in the section would be subject to the exception that the Court would be at liberty to exercise the powers conferred by s. 37—*Dwarkan Das v. Dharam Chand*, *supra*.

The Court is bound to order the winding up of a banking company, if it is unable to pay its debts unless a moratorium is applied for under s. 37—*Vastulal v. Mul Chand* (1955) N.U.C. 4680 (Raj.).

35. Debts.—The word "debts" in sub-s. (1) does not mean banking debts. The word is used *simpliciter* and unless there is something else in the context or other parts of the section which suggests a limited meaning, there would seem to be no reason why a word apparently used in a general sense, should be understood as limited to a particular meaning—*Dwarkan Das v. Dharam Chand*, *supra*.

36. Jurisdictions.—After the passing of the Banking Companies (Amendment) Act 20 of 1950 the only Court competent to deal with matters relating to or arising out of the winding up of a banking company including an application for winding up order is the High Court. Winding up proceedings pending in the District Court at the date of the aforesaid amendment must be transferred to the High Court and the District Court has no jurisdiction to proceed further with the application for winding up—*Fortune Commercial Bank v. Vidyagauri* (1951) B. 274; (1951) Bom. 403, 53 Bom.L.R. 72. The point of jurisdiction is not limited to winding up matters referred to in the present section but also extends to the winding-up proceedings under s. 162 of the Companies Act, 1913—*ibid*.

36A. Sub-ss. (1) and (3).—It cannot be contended that the inability to pay debt contemplated in sub-s. (1) must be such inability as is described in sub-s. (3) of this section. The effect of sub-s. (3) of this section and s. 163 of the Companies Act, 1913 read together is that the fact that a particular contingency is being specified in sub-s. (3) of the present section as to when a banking com-

pany shall be deemed to be unable to pay its debts, must not be understood to exclude the contingencies enumerated in sub-s. (1) of s. 163, Companies Act, 1913. So far as s. 38(1) of the present Act is concerned, its provisions are attracted as soon as it is proved that a company is a banking company and it is unable to pay its debts, either within the meaning of s. 163(1) or s. 38(3). So far as sub-s. (3) of s. 38 is concerned, the effect is only to add a fourth case where also a company, if it is a banking company, shall be deemed to be unable to pay its debt—*Dwarkanadas v. Dharam Chand, supra*.

Sub-s. (3).—The expression “without prejudice to the provisions contained in s. 163 of the Indian Companies Act, 1913” in this sub-section can only mean that the petitioner can rely upon either s. 163 or s. 38(3). It cannot compel a Court to construe the provisions of s. 38(3) in the light of the provisions of s. 163 by introducing any words found in s. 163 into the provisions of s. 38(3). The two provisions are alternative—*Venkatasubramania v. Annapoorni* (1955) N.U.C. 208 (Mad.), (1954) 1 M.L.J. 272.

This section does not say either expressly or by necessary implication that the demand should be made under the hand of the creditor. The demand made by the Commissioner for the payment of the amount due, on behalf of the creditor is a lawful demand within the meaning of s. 38(3)—*ibid*.

“38A. (1) There shall be attached to every High Court a court liquidator to be appointed by the Central Government for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose.

* * * * *

(4) Where having regard to the number of banking companies wound up and other circumstances of the case, the Central Government is of opinion that it is not necessary or expedient to attach for the time being a court liquidator to a High Court, it may, from time to time, by notification in the Official Gazette, direct that this section shall not have effect in relation to that High Court”.

This new section was inserted by the Banking Companies (Amendment) Act 52 of 1953. “The practice which prevails in all the States except Bombay, is that a private liquidator is appointed by the Court as official liquidator. It is considered desirable for greater expedition and reduction in costs of liquidation and from other standpoints that a court liquidator should be appointed who shall be in charge of all liquidation proceedings. It has therefore been provided that a court liquidator should be appointed by every High Court unless the Central Government grants an exemption in this behalf. The court liquidator shall be the official liquidator unless the High Court otherwise directs. In respect of proceedings now pending before any private liquidator, the private liquidator shall, unless the High Court otherwise directs, vacate his office and the vacancy shall be filled in by the appointment of the court liquidator as the official liquidator. An exception has been made in respect of the Reserve Bank in section 39.

When the Reserve Bank makes an application in this behalf, the Reserve Bank shall be appointed as the official liquidator"—*Notes on Clauses*.

Amendment.—Sub-ss. (2) and (3) of this section were omitted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957.

S. 38A not to apply to High Courts other than those of Calcutta, Bombay and Travancore-Cochin—See Notification No. S. R. O. 2057 of 28th October, 1953,

39. Notwithstanding anything contained "in section 38A of this Act or" in "section 448 of the Companies Act, 1956", where in any proceeding for the winding up by the "High Court" of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank *or the State Bank of India, as the case may be as stated in such application* shall be appointed as the official liquidator of the banking company in such proceeding.

This was clause 38 of the Bill. "Experience has shown that the cost of liquidation proceedings under the Indian Companies Act is high. It has, therefore, been provided in this clause that after the expiry of two years from the commencement of the Act the Reserve Bank should be empowered to carry out liquidations so that unnecessary expense and delay in liquidation proceedings may be avoided and that the assets may be realised as speedily as possible in the interests of the creditors"—*Notes on Clauses*.

The Select Committee however observed: "In our opinion it would be impracticable, at the present moment, for the Reserve Bank to undertake the liquidation of all banking companies ordered to be wound up. We have no doubt that the Reserve Bank would be willing to undertake the liquidation of banking companies in cases where large public funds are involved. We think that it should be left to the Reserve Bank to apply in suitable cases for being appointed as official liquidator in winding up proceedings. This clause has been redrafted accordingly."

Amendment.—See notes to s. 37 under the heading "Amendment." The words within inverted commas were inserted by the Banking Companies (Amendment) Act 52 of 1953. The words in italics were inserted by the State Bank of India Act 23 of 1955.

In this section the words and figures "section 448 of the Companies Act, 1956" have been substituted for "section 175 of the Indian Companies Act, 1913 (VI of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

40. Notwithstanding anything to the contrary contained in "section 466 of the Companies Act, 1956", the "High Court" shall not make any order staying the proceedings in relation to the winding up of a banking company, unless the "High Court" is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

This was clause 39 of the Bill. This section limits the power of the Court to stay proceedings to cases in which it is satisfied that the depositors can be paid in full—*Notes on Clauses*.

Amendments.—See notes to s. 37 under the heading “Amendment.” In this section the words and figures “section 466 of the Companies Act, 1956” have been substituted for other words by the Banking Companies (Amendment) Act 95 of 1956.

See notes to s. 466 of the Companies Act, 1956.

41. Notwithstanding anything to the contrary contained in “section 455 of the Companies Act, 1956”, where a winding up order is made in respect of a banking company, the official liquidator shall submit a preliminary report to the “High Court” within two months from the date of the order giving the information required by that section so far as it is available to him, to enable the “High Court” to order the payment of a preliminary dividend if sufficient assets are available.

This was clause 40 of the Bill. “The period prescribed under section 177B of the Indian Companies Act for the submission of a preliminary report by the official liquidator is too long in the case of a banking company and the clause is intended to remedy this defect”—*Notes on Clauses*.

Amendment.—See notes to s. 37 under the heading “Amendment.” In this section the words and figures “section 455 of the Companies Act, 1956” have been substituted for other words and figures by the Banking Companies (Amendment) Act 95 of 1956.

See s. 455 of the Companies Act, 1956 and notes thereto.

42. Notwithstanding anything to the contrary contained in “sections 460, 464 and 465 of the Companies Act, 1956”, the “High Court” may, in the proceedings for winding up a banking company, dispense with any meetings of creditors or contributories or with the appointment of a committee of inspection if it considers that no object will be secured thereby sufficient to justify the delay and expense.

This was clause 41 of the Bill. “In the case of a banking company, rapidity in liquidation is essential if the assets are not to grow cold or to be dissipated. The provisions for calling meetings of creditors to discuss arrangements or to appoint an advisory committee to work with the official liquidator should, therefore, be rescinded in the case of banking companies unless the Court considers that this should be done”—*Notes on Clauses*.

Amendments.—See notes to s. 37 under the heading “Amendment.” In this section the words and figures “sections 460, 464 and 465 of the Companies Act, 1956,” have been substituted for the words and figures “sections 178A and 183 of the Indian Companies Act, 1913 (VII of 1913)” by the Banking Companies (Amendment) Act 95 of 1956.

See ss. 178A and 183 of the Companies Act, 1913 (now ss. 464, 465 and 460 of the Companies Act, 1956).

43. "In any proceeding for the winding up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in 'section 474 of the Companies Act, 1956', the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness".

Booked depositor's credits to be deemed proved.

This section and the next section were substituted for the original s. 43 by the Banking Companies (Amendment) Act 52 of 1953. This revised s. 43 seeks to clarify the intention underlying the original s. 43 in interpreting which some High Courts have held that depositors should be required to file their claims. This section dispenses with the necessity of filing such formal claims in order to rank for dividend.—*Notes on Clauses.*

Amendment.—In this section the words and figures "section 474 of the Companies Act, 1956" have been substituted for the words and figures "section 191 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

See s. 474 of the Companies Act, 1956 and notes thereto.

"43A. (1) In every proceeding for the winding up of a banking company, after the preferential payments referred to in 'section 530 of the Companies Act, 1956' have been made, there shall be paid, to every depositor in the savings bank account of the banking company a sum of one hundred rupees or the balance at his credit, whichever is less, in priority to all other debts from out of the remaining assets of the banking company available for payment of general creditors.

Preferential payment to small depositors.

(2) The aforesaid payments shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion".

See notes to the last section. "In some countries, the small depositor is an object of particular solicitude. The bulk of savings bank account holders belong to the poor and lower middle class. The distress caused to these classes, when a bank fails, is relatively greater. Preferential payment of Rs. 100 is intended to afford them some relief"—*Notes on Clauses.*

Amendment.—In this section the words and figures "section 530 of the Companies Act, 1956" have been substituted for the words and figures "section 230 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

See s. 530 of the Companies Act, 1956 and notes thereto.

44. Notwithstanding anything to the contrary contained in "section 484 of the Companies Act, 1956", no banking company which holds a licence granted under section 22 may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue, and without prejudice to the provisions contained in "sections 521 and 441" of that Act, the "High Court" shall, on the application of the Reserve Bank, order the winding up of the company by the "High Court" if at any stage during the voluntary winding up proceedings the company is not able to meet such debts as they accrue.

Restriction on voluntary winding up.

This was clause 43 of the Bill. "It has been found that banking companies in a shaky condition takes advantage of the voluntary winding up proceedings or manipulate such proceedings to the disadvantage of the depositors who are a scattered body and are unlikely to take concerted action. The clause is intended to prevent such abuses by a banking company which holds a licence granted under clause 21" (now s. 22)—*Notes on Clauses.*

Amendments.—See notes to s. 37 under the heading "Amendments." In this section the words and figures "section 484 of the Companies Act, 1956" have been substituted for "section 203 of the Indian Companies Act, 1913 (VII of 1913)" and "sections 521 and 441" have been substituted for "sections 218 and 220" by the Banking Companies (Amendment) Act 95 of 1956.

See those sections in the Companies Act, 1956 and notes thereto.

"44A. (1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.

Procedure for amalgamation of banking companies.

(2) Notice of every such meeting as is referred to in subsection (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association, indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such news-

papers being in a language commonly understood in the locality or localities.

(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting to the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof.

(5) Where a scheme of amalgamation is sanctioned by the the Reserve Bank under the provisions of this section, the Reserve Bank shall transmit a copy of the order sanctioning the scheme to the registrar before whom the banking companies concerned have been registered, and the registrar shall, on receipt of any such order, strike off the name of the company (hereinafter in this section referred to as the amalgamated banking company) which by reason of the amalgamation will cease to function.

(6) On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to the terms of the order sanctioning the scheme."

The above new section was inserted by the Banking Companies (Amendment) Act, 1950.

Sub-s. (1). "Anything contained in any law".—See s. 153A of the Indian Companies Act, 1913 replaced by s. 394 of the Companies Act, 1956, and notes thereto.

"45. (1) Notwithstanding anything contained in any law for the time being in force, no *High Court* shall sanction a compromise or arrangement between a banking company and its creditors or any class of them or between such company and its members or any class of them unless the compromise or arrangement is certified by the Reserve Bank *in writing as not being incapable of being worked and as not being detrimental to the interests of the depositors of such banking company.*

Restriction on compromise or arrangement between banking company and creditors.

(2) Where an application under 'section 391 of the Companies Act, 1956' is made in respect of a banking company, the High Court may direct the Reserve Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such a direction is given, the Reserve Bank shall make such inquiry and submit its report to the High Court."

This section was substituted for the original s. 45 by the Banking Companies (Amendment) Act, 1950 which received the President's assent on 18th March, 1950.

Amendments.—See notes to s. 37 under the heading "Amendment."

This section has been amended by the Banking Companies (Amendment) Act 52 of 1953 in the following way:—This section has been re-numbered as sub-section (1) thereof, and in sub-s. (1) so re-numbered the second words in italics have been substituted for the words "as not being detrimental to the interests of the depositors of such company", and then sub-s. (2) has been inserted in which the words and figures within inverted commas have been substituted for other words and figures by the Banking Companies (Amendment) Act 95 of 1956.

"Section 45 has been amended to clarify the functions of the Reserve Bank in relation to schemes of arrangement. A certificate of the Reserve Bank under section 45 of the Banking Companies Act shall state that (a) the arrangement is not detrimental to the interests of the depositors, and (b) that arrangement is not impracticable. It is considered that on a direction from the High Court, the Reserve Bank should investigate into the affairs of the bank and the conduct of the past management. Such a report of the Reserve Bank will be helpful to the High Court in exercising its discretion in sanctioning the scheme"—*Notes on Clauses.*

37. Jurisdiction of Court.—In the case of banking companies, this section as amended in 1950 imposes a further condition in respect of schemes which relate to the banks. The Court has been deprived of its jurisdiction to confirm a scheme of arrangement or compromise even though it has been sanctioned by the requisite majority under s. 153(2) of the Companies Act, 1913, but has not been certified by the Reserve Bank. This certificate has first to be obtained before a scheme can be presented to the Court for its approval—*Bengal Bank Ltd. v. Suresh Chakravarti, infra.*

See s. 153 of the Companies Act, 1913 (Now s. 391 of the Companies Act, 1956).

Either s. 45 or Cl. 12 of the Banking Companies (Control) Ordinance, 1948 did not affect vested rights or substantive law, but dealt with the mode and method in which persons who wanted a scheme to be approved by the Court had to approach the company Judge in order to obtain the appropriate order. Therefore, provisions either with regard to certificate or report from a bank or any other authority were mere auxiliary to the substantive right which had been conferred by s. 153 of the Companies Act and in that view s. 45 of the Banking Companies Act would be retrospective—*Tripura Modern Bank* (1950) C. 240, 54 C.W.N. 262. Consequently where a creditor's application under s. 153 for the consideration of a scheme for a banking company was dismissed on the ground that it was not accompanied by a certificate of the Reserve Bank as required under Cl. 19 of the above mentioned Ordinance the appellate Court before which the appeal against that order was pending when the Banking Companies Act, 1949, which dispensed with the necessity for such a certificate as a condition precedent to the application, came into force, can give effect to it and hold that the application was properly instituted—*ibid.* In *re a Debtor* (1936) Ch. 237 Lord Wright observed: "While an Appellate Court is able and bound to give effect to new remedies which have been introduced by enactments passed after the order appealed from was made by the Court of first instance, yet with regard to substantive rights it is well established that the Appellate Court must give effect to the same law as that which was in force at the date of the earlier proceeding."

38. **Powers of the Reserve Bank.**—The Reserve Bank has a very limited power in the matter of granting the certificate. The certificate is limited to the Reserve Bank certifying that the scheme is not detrimental to the interests of the depositors. No power is given to the Reserve Bank to modify a scheme which has been sanctioned under sub-s. (2) of s. 153 of the Indian Companies Act, 1913—*Bengal Bank Ltd. v. Suresh Chakravarty* (1951) 55 C.W.N. 207, (1952) C. 133.

"PART IIIA

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS.

For the original Part IIIA, this new Part IIIA was substituted by the Banking Companies (Amendment) Act 52 of 1953 which came into force on 30th December, 1953.

N.B. The amendments made in sections contained in Part IIIA by the Banking Companies (Amendment) Act 95 of 1956 shall not apply to a banking company the winding up of which commenced before 1st April, 1956—See the Proviso to s. 14 of the aforesaid Act 95 of 1956.

45A. The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the "Companies Act, 1956" or the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal

Part IIIA to override other laws.

Procedure, 1898 (Act V of 1898) or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part.

Amendment.—In this section the words and figures “Companies Act, 1956” have been substituted for the words and figures “Indian Companies Act, 1913 (VII of 1913)” by the Banking Companies (Amendment) Act 95 of 1956.

“This is intended to override the provisions of any law which is repugnant to this Part and in so far as such law is not so repugnant, such law shall continue to apply to proceedings under this Part”—*Notes on Clauses*.

39. **Jurisdiction.**—The overriding powers conferred by ss. 45A, 45B and 45C are very wide indeed, and the High Court which has passed an order for winding-up is the only Court which can deal with the execution of a creditor's decree against the bank in liquidation. Thus that Court has jurisdiction to entertain an application by the bank for settling aside an order passed by another High Court attaching the securities of the bank at the instance of its creditors—*Simla Banking & Industrial Co. v. Ran Narain* (1955) N.U.C. 4921 (Punj.) A proceeding to execute the decree obtained by a displaced creditor from a Tribunal under the Displaced Persons Act against a bank and all other incidental matters arising therefrom, such as attachment are matters within the exclusive jurisdiction of the Court that has directed winding-up proceedings of the bank—*Ran Narain v. Simla Banking and Industrial Co.* (1956) S.C. 614, (1956) S.C.J. 579, (1956) S.C.A. 893.

The effect of this section is that any law, e.g., the provisions of the Companies Act shall apply to the proceedings under this Part unless they are repugnant to any of the provisions of this Part.

The Orissa Estates Abolition Act I of 1952 being an earlier general Act, the exclusive jurisdiction conferred by it on the Claims Officer must give way to the provisions of the present Part IIIA of the Banking Companies Act by which the High Court alone has exclusive jurisdiction to determine the claim of a banking company under liquidation for payment of the compensation money—*H. Naik, O. L., Puri Bank v. Kanhu Charan* (1954) Or. 186. But there being no conflict regarding the estimation of the amount so payable, the provisions of s. 20(2) of the Orissa Act as to the scaling down of the interest and the provisions of s. 28(3) thereof would continue to apply—*ibid*.

45B. The High Court shall, save as otherwise expressly provided in section 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under “section 391 of the Companies Act, 1956” by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to

Power of High Court to decide all claims in respect of banking companies.

or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953.

Amendment.—In this section the words and figures “section 391 of the Companies Act, 1956” have been substituted for the words and figures “section 153 of the Indian Companies Act, 1913 (VII of 1913)” by the Banking Companies (Amendment) Act 95 of 1956.

“The intention underlying ss. 45B, 45C and 45J is to allow the liquidator to proceed with all proceedings in one court, namely, the High Court, and avoid recourse to a multiplicity of courts. The High Court has, however, been given the discretion not to transfer to itself any pending proceeding, if such transfer causes hardship to the parties”—*Notes on Clauses*.

40. **Scope.**—Where the liquidator has to approach the Court under this section for relief in respect of matters legitimately falling within the scope thereof, elaborate proceedings by way of a suit involving time and expense, to the detriment of the ultimate interests of the company under liquidation, were not contemplated. In the absence of any specific provision in the Act or in the Rules framed by the High Courts concerned under s. 45G, the procedure must be taken to be left to the judgment and discretion of the Court having regard to the nature of the claim and of the questions therein involved—*Dhirendra v. Associated Bank of Tripura* (1955) S. C. 13, (1955) S. C. A. 72. Section 45B is not confined to claims for recovery of money or property movable or immovable, but comprehends all sorts of claims which relate to or arise in the course of winding-up. Obviously the normal proceeding that the section contemplated must be taken to be a summary proceeding by way of application—*ibid* (over-ruling *Sree Bank's Case* (1951) 55 CWN. 400).

Whatever may be the internal position in a given case between the provisions of the present Act and those of the Displaced Persons (Debt Adjustment) Act, 1951, in so far as such provisions relate to displaced debtors, it cannot be said that the jurisdiction vested in the High Court by the wordings of the present section is overridden or displaced by anything in the Displaced Persons (Debt Adjustment) Act, 1951 in so far as they relate to displaced creditors—*Ram Narain v. Simla Banking & Industrial Co.* (1956) S. C. 614, (1956) S. C. A. 893, (1956) S. C. J. 579.

40A. **Jurisdiction.**—This section gives the High Court exclusive jurisdiction to entertain and decide all claims and questions which may relate to or arise in the course of the winding-up of a banking company. This jurisdiction embraces the existing power and jurisdiction under the Companies Act including the power to make calls and order payments of calls under s. 187 of the Companies Act, 1913 (now s. 470 of the Companies Act, 1956). The powers and jurisdiction vested in the High Court under the Companies Act and the present Act are integrally related to the basic powers and jurisdiction vested in the High Court by the Constitution and the Letters Patent. Where a new jurisdiction of an ordinary original and civil nature is vested in a High Court, that new jurisdiction must be exercised as part of its existing ordinary original civil jurisdiction—*Dhahuria Banking Corpn.* (1955) N.U.C. 4849 (Cal.),

The decrees and orders passed by the High Court under the present section in the exercise of its ordinary original civil jurisdiction can be enforced in the ordinary course of law directly only within the limits of that jurisdiction—*ibid.* The present section does not deprive the High Court of its powers to send its decrees and orders for execution by other Courts whose jurisdiction to enforce such decrees and orders is not taken away by the present section. Hence in the execution of an executive order for payment of calls under s. 187 of the Companies Act, 1913, the High Court has, under the present section, no power to order attachment and sale of properties situated outside the territorial limits of its ordinary original civil jurisdiction—*ibid.*

Institution of a suit and carrying it on are matters which relate to the winding up of the company; only the High Court in which the winding-up is pending has jurisdiction to try such suits, and such suits if brought in any other Court will stand transferred to the High Court—*Discount Bank v. Triloki Nath* (1953) Punj. 145, I.L.R. 1952 Punj. 349.

When the Court, which has inherent jurisdiction to decide the claim under this section, treats an application as a plaint, it does not act without jurisdiction. It is a curable irregularity, and if the debtor appears in the Court and contests the application without objection to jurisdiction and does not appeal from the decree, the irregularity can be assumed to have been waived—*Associated Bank v. Sonatan* (1954) Trip. 5.

Where a claim against one of the defendants, a bank, being triable exclusively by the High Court under this section, the trial Court returns the plaint for presentation to the High Court, the claim against the other defendants can also be tried by the High Court—*Gurbinder Singh v. Munshi Ram* (1954) Punj. 196.

41. **Question relating to or arising in the course of winding-up.**—It is the High Court, and no other Court, which has jurisdiction to decide any matter which relates to or arises out of the winding-up of a banking company, when its registered office is within the jurisdiction of the High Court, including all questions of priorities and all other questions whether of law or fact—*Jadunath v. Bank of Calcutta* (1952) C. 506 (S. B.).

The expression "relating to the winding-up" is much wider and much more extensive than the expression "arising out of the winding-up." A suit filed by the Official Liquidator to recover a claim due to a banking company from its debtor is a matter relating to or arising out of the winding-up. The High Court has jurisdiction to decide the matters under this section, even though the claim is below Rs. 25,000, and the jurisdiction of the City Civil Court has been ousted—*Associated Banking Corpn. v. Nazaralli Kassambhai & Co* (1952) B. 223. See in this connection *Pioneer Bank v. Gyan Koer* (1952) Ass. 82 (S. B.).

"In the course of" means "during" the winding-up. All proceedings in the suit subsequent to the winding-up arise in the course of the winding-up. The test seems to be that if at any stage of a proceeding the liquidator becomes a party to it, it arises in the course of winding-up—*Jadunath v. Bank of Calcutta*, *supra*. But see *Discount Bank v. A. N. Misra* (1956) Punj. 256 where it has been held that the meaning of the words "relating to or arising out of" cannot be extended to mean any matter in which a banking company is a party and the company goes into liquidation. There must be some intimate connection between the proceedings or claim and the winding-up of the company.

Proceeding under O. 21, r. 58 C. P. Code.—A proceeding under O. 21,

r. 58 C. P. C. instituted by a liquidator or any step taken by him in a proceeding under the Rule already initiated before the liquidation commenced is a proceeding arising in the course of, if not out of, the winding-up—*Hemanga Coomer v. M. C. Chakravarti* (1952) C. 732 per Chakravarti & P. B. Mukherjee JJ. Such a proceeding was a claim within ss. 45A and 45B (now repealed) as introduced by the Banking Companies (Amendment) Act XX of 1950.

Insolvency proceedings.—The question as to whether a debtor of a banking company under liquidation should be adjudged an insolvent and should get the protection of the insolvency law is a matter relating to the winding-up of the banking company and consequently the High Court alone has exclusive jurisdiction to decide this question as well as all other questions arising out of the same. The District Judge as an insolvency Court has no jurisdiction to entertain the petition of the judgment-debtor to prosecute his petition—*H. Naik, O. L. Puri Bank v. Jitendranath* (1954) Or. 139 relying on *Discount Bank v. Triloki Nath* (1953) Punj. 145, I.L.R. (1952) Punj. 349. SS. 45A and 45B were inserted by the amending Act of 1950 with the main object of conferring even extra-territorial jurisdiction on a High Court, so that all claims of a banking company against its debtors might be realised as soon as possible—*H. Naik, O. L. Puri Bank v. Jitendranath*, *supra*.

45C. (1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other court immediately before the commencement of the Banking Companies (Amendment) Act, 1953, or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.

Transfer of pending proceedings.

(2) The official liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.

(4) If any proceeding pending in a court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

For Notes on Clauses see notes to s. 45B.

42. **Transfer under s. 11 of Act XX of 1950.**—Under s. 11 of Act XX of 1950 (now repealed) the transfer was automatic. No order of the Court was necessary. On formal information from the High Court, the records of the proceedings were to be sent to the High Court—*Jadunath v. Bank of Calcutta* (1952) C. 506 (S.B.).

The amending Act XX of 1950 came into force on 18th March, 1950. Where therefore the execution proceedings were started on 8th August, 1950 in the Court of the Munsiff, ss. 45A and 45B of Act X of 1949 (now repealed) and s. 11 of Act XX of 1950 (now repealed) did not apply and the execution proceedings did not automatically stand transferred to the Original Side of the High Court. The Munsiff's Court had the jurisdiction to deal with the execution proceedings—*Surendra Nath v. Mohini Mohan* (1954) C 73 per R P Mookerjee J., (not following *Jadunath v. Bank of Calcutta*, supra and following *Fortune Commercial Bank v. Vidya Gauri* (1951) B. 227).

Where an appeal was filed in the Punjab High Court by a banking company before the winding-up proceedings were started by the Bombay High Court, the appeal could not be transferred to the Bombay High Court as the appeal had no intimate connection with the winding-up proceedings—*Discount Bank v. A. N. Misra* (1953) Punj. 256.

43. **Scope of the present section.**—SS 45D and 45M (*infra*) have no reference to an order under s. 45C which stands all by itself and refers to transfer of pending proceedings. This power of transfer given to the High Court extends only to cases of companies where a winding-up order is made—*Bank of Assam Ltd.* (1955) Ass. 248.

For the scale of Advocate's fees, see *In re Banking Company Petitions* (1957) Kerala 57.

44. **Sub-s. (1): "Any other Court."**—It is clear from s. 28 of the Displaced Persons (Debt Adjustment) Act, 1951 that the Tribunal is a Civil Court when it executes the decree, whatever may be its status when it passed the decree as a tribunal. Hence such Tribunal is a "Court" within the meaning of this section which therefore applies to a proceeding pending before the Tribunal—*Ram Narain v. Simla Banking & Industrial Co.* (1956) S. C. 614 (1956) S.C.A. 893, (1956) S. C. J. 579.

45. **Sub-s. (2): Successive reports.**—There is nothing in sub-s. (2) that two or more successive reports may not be made within the prescribed period of three months—*ibid.* In respect of a pending matter which was not in fact brought to the notice of the Court by the liquidator within the three months, there is nothing to prevent the Court exercising its power of transfer at such time when it is brought to the Court's notice—*ibid.* (obiter).

45D. (1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.

(2) Subject to any rules that may be made under section 52, the official liquidator shall, within six months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953, whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule:

Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

(3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make an order settling the list of debtors:

Provided that nothing in this section shall debar the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.

(4) At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

(5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other

time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

(9) In any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit:

Provided that the High Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall—

(a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or

(b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

“Multiplicity of proceedings has been one of the major evils and one of the chief causes of delay and expense in liquidation proceedings. The ordinary legal machinery for collection of debt by filing suit is slow and subject to delaying tactics on the part of the debtors. This section provides for a simple procedure for settlement of the list of debtors on the analogy of the list of contributories under the Indian Companies Act, 1913”—*Notes on Clauses*.

45A. Sub-s. (2). Various claims in one list—*Vakalats*.—Various claims covered by a single list of debtors should not each be treated as a separate list and separate *Vakalats* need not be filed in respect of each claim by an Advocate appearing for a debtor against whom several claims are made under a single list—*State v. Official Liquidator* (1957) Kerala 17.

46. Sub-s. (4).—Where it is customary for the bank to collect an amount either by cash or by cheque from any other bank in lieu of a cheque and it does not take recourse to an unusual practice in asking for or accepting a cheque for a

sum in payment of the cheque issued by the customer, no negligence can be attributed to the collecting bank if it fails in realizing the sum—*Shillong Banking Corpn. v. Dhonsiri Saw Mills Ltd.* (1955) Ass. 246. What s. 45O implies is that the claim will be alive if it be not time-barred at the date the application for winding up is submitted. The subsequent order under the present section is only a continuation of the winding-up proceeding subject to the provisions of sub-ss. (1) and (2) of the present section—*ibid.*

See ss. 184 and 187 of the Companies Act of 1913 (now ss. 467 and 470 of the Companies Act, 1956).

Rule.—For rule under this section, see Rule 15A in Appendix A.

For the scale of Advocate's fees, see *In re Banking Company Petitions* (1957) Kerala 57.

45E. Notwithstanding that the list of the contributories has not been settled under "section 467 of the Companies Act, 1956," the High Court may, if it appears to it necessary or expedient so to do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of "section 470 of the Companies Act, 1956," if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

Amendment.—In this section the words and figures "section 467 of the Companies Act, 1956" and "section 470 of the Companies Act, 1956" within inverted commas have been substituted for the words and figures "section 184 of the Indian Companies Act, 1913 (VII of 1913)" and "section 187 of the Indian Companies Act, 1913 (VII of 1913)" respectively by the Banking Companies (Amendment) Act 95 of 1956.

"Under the Indian Companies Act, calls cannot be made on contributories unless the entire list of contributories is settled. Such settlement is delayed when any of the contributories disputes his liability. It is, therefore considered necessary that in the case of banking companies, there should be a departure from the normal procedure of the Indian Companies Act and that contributories on the list who do not dispute their liability should be called upon to pay"—*Notes on Clauses.*

45F. (1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all proceedings by or against the banking company; and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books

Documents of banking company to be evidence.

of account or other documents of the banking company in his possession.

(2) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (1 of 1872), all such entries in the books of account or other documents of a banking company shall, as against the directors of the banking company in respect of which the winding up order has been made before the commencement of the Banking Companies (Amendment) Act, 1953, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

"It is often difficult for a liquidator to prove the entries in documents of banking companies. To obviate such difficulty, a simple mode of proving such entries has been provided. Under the ordinary law, such entries by themselves, are not sufficient to charge any person with liability. It is very difficult for a liquidator to produce the independent evidence required by law to substantiate such entries. This difficulty is acutely felt in misfeasance summons where large amounts are claimed from directors. At the same time to make a general rule that such entries shall be taken as correct and sufficient proof of the transactions to which they relate would hardly be justified. The scope of section 45F (2) has therefore been restricted only to directors of banks which have gone into liquidation before the Amendment Act comes into force and the entries in the books of account will be *prima facie* evidence of the truth of all matters purporting to be recorded therein against the directors and the onus of proving the contrary will be on the directors"—*Notes on Clauses*.

47. Scope.—This section is not a provision in derogation of the Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the ordinary law of evidence, but is in addition thereto. That is the effect of s 2 *ante*. It gives an added facility to the banking company in liquidation to prove the entries in the books of account either by production of the books or by the requisite liquidator's certificate instead of the principal accountant's or manager's certificate as required by the Bankers' Books Evidence Act. That does not mean that an original statement of account certified by the manager cannot be accepted as evidence if the statement with the certificate is proved by the author himself of such statement and certificate—*Calcutta National Bank v. Sonapur Tea Co.* (1957) C. 9.

45G. (1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under subsection (1), the High Court is of opinion that any person who

has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, in so far as they relate to the affairs of the banking company:

Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.

(3) The official liquidator shall take part in the examination and for that purpose may, if specially authorised by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made or suggested against him, the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not)—

(a) that a person, who has been a director of the banking company, is not fit to be a director of a company, or

(b) that a person, who has been an auditor of the banking company or a partner of a firm acting as such auditor, is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor,

the High Court may make an order that, that person shall not, without the leave of the High Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

"In the case of a banking company, the depositors, whose moneys are liable to be squandered, have no voice in the appointment of directors. Since the failure of a bank is mostly due to mismanagement and misdeeds on the part of the directors, it is reasonable that the delinquent directors and the auditors should be made answerable for defaults and be liable to penalties"—*Notes on Clauses*.

See s 196 of the Companies Act, 1913 (now s 478 of the Companies Act, 1956).

45H. (1) Where an application is made to the High Court under "section 543 of the Companies Act, 1956" against any promoter, director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Special provisions for assessing damages against delinquent directors, etc.

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under "section 543 of the Companies Act, 1956" and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator, or officer of the banking company, whether the property stands in the name of such person or any other person as an ostensible owner, then the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall

remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) relating to attachment of property shall, as far as may be, apply to such attachment

Amendment.—In sub-ss. (1) and (2) of this section the words and figures "section 543 of the Companies Act, 1956" have been substituted for the words and figures "section 235 of the Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

"The practical difficulty of establishing a claim and ensuring its satisfaction under section 235 of the Indian Companies Act is considerable. This provision is intended to lessen such difficulty. The High Court has also been given powers to attach at any time any property which in the opinion of the High Court belongs to any promoter, director or officer of the banking company, though such property may stand in the name of a *benamdar* of such person"—*Notes on Clauses*.

See s. 235 of the Companies Act, 1913 (now s. 543 of the Companies Act, 1956).

Limitation.—For the special period of limitation see s. 45 O (2) *post*, and for limitation in other cases see s. 235 of the Companies Act, 1913 (now s. 543 of the Companies Act, 1956).

48. Onus.—Under s. 235 of the Companies Act, 1913 (now s. 543 of the Companies Act, 1956) the entire *onus* is upon the liquidator to prove his case. By the present section the rule about the *onus* of proof has been modified by making a provision that where the applicant has been able to establish a *prima facie* case, the *onus* will be shifted to the persons against whom the application is made to prove that they are not guilty of misfeasance. This section does not however enact any provision about the rights or liabilities of the parties and the order is not therefore a judgment within the meaning of s. 15 of the Letters Patent—*Nath Bank v. Khetra Nath* (1955) N.U.C. 3665 (Cal.).

There is a substantial distinction between *making out* a *prima facie* case and disclosing a *prima facie* case. If the application does not disclose a *prima facie* case, it is liable to be summarily dismissed. But if it discloses a *prima facie* case, it will be admitted for further consideration. A *prima facie* case is to be made out by legally admissible evidence including affidavits, provided that such affidavits comply with Or. 19, r. 3, C. P. Code—*ibid*.

Under this section the applicant may either confine himself to the petition and the supporting materials, or he may adduce only a portion of the evidence available to him and ask for an order against the respondent. If however he chooses the latter alternative, he will do so at his risk. If the respondents succeed in adducing evidence which is sufficient to rebut the evidence adduced by the applicant, he cannot then turn round and say that he has further evidence and will proceed to adduce the same—*ibid*.

In the present section the mandatory provision is preceded by a condition precedent and when that is satisfied, no discretion is left to the Court. It cannot be said that even if the applicant has made out a *prima facie* case, the Court has still discretion under the present section to refuse to call upon the respondents to prove that they are not guilty of misfeasance—*ibid*.

45I. Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company.

Duty of directors and officers of banking company to assist in the realisation of property.

"This provision has been introduced on the lines of section 43 of the Presidency Towns Insolvency Act, 1909"—*Notes on Clauses.*

45J. (1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof:

Special provisions for punishing offences in relation to banking companies being wound up

Provided that the offence is one punishable under this Act or under the "Companies Act, 1956".

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1898 (Act V of 1898), be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High Court—

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;

(b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice;

(c) shall, before passing any sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898), so far as that section may be applicable;

and nothing contained in sub-section (2) of section 262 of the Code of Criminal Procedure, 1898, shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the "Companies Act, 1956" and which are not tried in a summary way under

sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898) the High Court may take cognizance of any offence under this section without the accused being committed to it for trial and all such trials shall be without the aid of a jury.

Amendment.—In this section the words and figures "Companies Act, 1956" have been substituted for the words and figures "Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

48A. This section corresponds to s. 45C (now repealed) introduced by s. 11 of the Banking Companies (Amendment) Act XX of 1950, under which it was held that the said s. 11 did not require all offences under the Indian Penal Code, which were not punishable also under the Companies Act, to be tried by a Judge of the High Court, as against the managing director, directors, officers and so on. Offences, such as forgery and criminal breach of trust, even if they were disclosed in the course of the winding-up had to be tried by the ordinary court not inferior to that of a Presidency Magistrate or a first class Magistrate under s. 278 (1) of the Companies Act, 1913, and the procedure under s. 237 (1) of that Act for prosecution of such cases on a direction of the winding-up Court was left undisturbed—*In re, Swaminatha* (1952) M. 727.

49. Jurisdiction.—A Court winding up a banking company had jurisdiction only in those cases which were punishable under the Companies Act and in which the sentence did not exceed two years or the fine did not exceed Rs. 1000. In other cases the Court winding up the company would have no jurisdiction and the trial would have to be in the Court which had jurisdiction to take cognizance of the offence—*U. P. Union Bank v. Ali Akmad* (1952) A. 848. The case pending in the Court of the Special Magistrate against the manager and secretary of the company under ss. 406 and 420 I. P. C. did not stand transferred to the High Court where the winding-up proceedings commenced—*ibid.*

It cannot however be urged that the proceedings instituted and investigated into by the Judge sitting on the Original Side of the High Court and dealing with company matters are without jurisdiction or they are in any way defective or vitiated by reason of the non-framing of the Rules under s. 45G (introduced by Act XX of 1950, now repealed) corresponding to the present s. 45U—*Loom Chand v. O. L. Peerdan Johurmall Bank* (1953) M. 595, (1953) 1 M.L.J. 514. The proper and competent Court contemplated by the scheme of the Act would only be the High Court and not the Presidency Magistrate's Court, even if the offence has been tried in a summary way—*ibid.* Merely because the procedure followed had been that of a warrant case, while the case was being tried in a summary way, it cannot be said that the Judge dealing with the proceedings for the winding up of the banking company was not competent to try the offence—*ibid.*

45K. (1) Where a High Court makes an order under "section 391 of the Companies Act, 1956"

Power of High Court to enforce schemes of arrangements, etc.

sanctioning a compromise or arrangement in respect of a banking company, it shall have power to supervise the carrying out of the compromise or arrangement and may at the time of making such order or at any time thereafter give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the High Court is satisfied that a compromise or arrangement sanctioned under "section 391 of the Companies Act, 1956" cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the banking company, make an order winding up the banking company and such an order shall be deemed to be an order made under "section 433 of the Companies Act, 1956".

(3) The provisions of this section shall, so far as they may, also apply to a banking company in respect of which an order under "section 391 of the Companies Act, 1956" sanctioning a compromise or arrangement has been made before the commencement of the Banking Companies (Amendment) Act, 1953.

"This section seeks to empower the High Court to exercise control over schemes of arrangement and also order winding up of banking companies when such schemes are found to be unworkable"—*Notes on Clauses*

Amendments—In sub-ss (1), (2) and (3) the words and figures "section 391 of the Companies Act, 1956" have been substituted for "section 153 of the Indian Companies Act, 1913 (VII of 1913)" and in sub-s (2) the words and figures "section 433 of the Companies Act, 1956" have been substituted for "section 162 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

45L. (1) Where an application for sanctioning a com-

Public examination of directors and auditors, etc., in respect of a banking company under schemes of arrangement.

promise or arrangement in respect of a banking company is made under "section 391 of the Companies Act, 1956" or where such sanction has been given and the High Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, it may direct such examination of such person and the provisions of section 45G shall, as far as may be, apply

to the banking company as they apply to a banking company which is being wound up.

(2) Where a compromise or arrangement is sanctioned under "section 391 of the Companies Act, 1956" in respect of a banking company, the provisions of "section 543 of the said Act" and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

"It provides that the provisions of public examination of directors and auditors and those of section 235 of the Indian Companies Act, 1913, which are applicable to banks in liquidation only, shall also be available in respect of banks under schemes of arrangement"—*Notes on Clauses.*

Amendment.—In sub-ss (1) and (2) the words and figures "section 391 of the Companies Act, 1956" have been substituted for "section 153 of the Indian Companies Act, 1913 (VII of 1913)" and in sub-s (2) the words and figures "section 543 of the said Act" have been substituted for "section 235 of the said Act" by the Banking Companies (Amendment) Act 95 of 1956.

45M. Where any compromise or arrangement sanctioned in respect of a banking company under "section 391 of the Companies Act, 1956" is being worked at the commencement of the Banking Companies (Amendment) Act, 1953, the High Court may, if it so thinks fit, on the application of such banking company,—

Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act.

(a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; or

(b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 45D and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

"This seeks to give the benefit of the simple procedure of the settlement of debtors also to banks at present working under schemes of arrangement"—*Notes on Clauses.*

Amendment.—In this section the words and figures "section 391 of the Companies Act, 1956" have been substituted for "section 153 of the Indian Companies Act, (VII of 1913)" by the Banking Companies (Amendment) Act 95 of 1956.

45N. (1) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees.

Appeals.

(2) The High Court may by rules provide for an appeal against any order made under section 45J and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand

This section provides for a restricted right of appeal in certain cases—
Notes on Clauses

50. Civil appeals.—Sub-s (1) provides for appeals in civil cases under the Act where the amount or value of the subject matter of the claim exceeds Rs 5000

The right of appeal conferred by this section is limited to orders in original civil proceedings contemplated by the Act and does not extend to orders passed in civil proceedings started under the Companies Act—*Nath Bank v Khetra Nath* (1955) NUC 3665 (Cal)

Where in a proceeding under s 235 of the Companies Act, 1913 the Court rejected the applicant's contention that under s 45H it was not necessary for the appellant to adduce any evidence in the first instance and that it was for the respondents to begin their case and to prove that they were not guilty of misfeasance, it was *held* that the right of appeal conferred by s 45N was limited to orders in original civil proceedings contemplated by the present Act and did not extend to orders passed in civil proceedings started under the Companies Act—*ibid.*

Where the order appealed from was passed after s 45N had come into force, if the order be of such a character as is contemplated by that section, a right of appeal under it cannot be denied on the ground that when the application under s 235, Companies Act, 1913 was made the section had not yet been enacted—*ibid.*

51. Criminal appeals.—Sub-s (2) leaves it to the High Court to make rules providing for an appeal against an order made under s 45J which makes special provisions for punishing offences in relation to banking companies that are being wound up. See s 45J and notes thereto

52. Appeal to Supreme Court.—S 45N does not contemplate appeals to the Supreme Court—*Nath Bank v Khetra Nath* (1955) NUC 3665 (Cal)

45O. (1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or in any other law for the time being in force, in computing the period

Special period of limitations.

of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or "section 543 of the Companies Act, 1956" or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims.

(3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953.

"This section deals with the question of limitation. In any suit or application by a banking company which is being wound up, limitation should cease to run from the date of presentation of the petition for winding up. It is also necessary to provide that there should be no limitation in the case of claims of a banking company arising *ex contractu* against the directors. In all other claims of the banking company against directors, the period of limitation should be twelve years. This section has been given retrospective effect"—*Notes on Clauses*.

Amendment.—In sub-s (2) of this section the words and figures "section 543 of the Companies Act, 1956" have been substituted for "section 235 of the Indian Companies Act, 1913 (VII of 1913)" by the Banking Companies (Amendment) Act, 1956.

53. Section not retrospective.—A retrospective operation is not to be given to a statute so as to impair an existing right, unless the effect cannot be avoided without doing violence to the language. If it is fairly capable of either interpretation, it ought to be construed as prospective only. Applying this test it must be held that this section is not retrospective and it cannot have the effect of reviving a claim which has already become unenforceable by lapse of time—*Punjab Commerce Bank v. Brij Lal* (1955) Punj. 45 followed in *Federal Bank of India v. Som Dev* (1956) Punj. 21. Sub-s. (1) of this section does not refer to a pending proceeding either expressly or by necessary implication, and there is nothing in it inconsistent with the rule that a statute which is not a matter of procedure does not affect a pending proceeding—*Suburban Bank v. Nisteron* (1955) C. 172, 58 C.W.N. 676.

54. Scope.—The legislature considered that a strict application of the existing law of limitation to claims by banking companies in liquidation was unjust and unreasonable and to remedy the evil it by Ordinance 23 of 1949 and Act 20 of

1950 inserted s. 45F in the Act providing for a special law of limitation for suits and applications in respect of claims accruing before the order for winding-up. Ordinance 4 of 1953 and Act 52 of 1953 substituted in the present Act a new Part IIIA consisting of a group of sections including the present section—*Suburban Bank v. Nistaran*, supra.

S. 45F of the Banking Companies (Amendment) Act 1950 provided for suspension of limitation for one year immediately preceding the date of the order of winding up. In computing the period of limitation if time expired within or after this period of one year, that year should be excluded. But in suits or proceedings in which time had already run out before the period of one year, there was no revival of the cause of action—*Pioneer Bank v. Bamandeb* 54 C.W.N. 710.

54A. **Forfeiture of shares.**—In the case of forfeiture of shares ordinarily under the Limitation Act the liquidator's claim for the amount of unpaid calls would be barred within 3 years from the date of the forfeiture. But by reason of the present section the claim is kept alive and a further period of limitation was given from the date of the presentation of the winding-up petition—*Agricultural & Industrial Bank* (1957) M. 295.

An order made by the Court under s. 221 of the Companies Act, 1913 is an order of the Court for winding up the company by the Court for the purposes of this section—*Federal Bank v. Durga Das* (1954) Punj. 21.

As to the application of the previous s. 45F (now repealed) to an application under s. 151 C. P. Code, see *Sutendra Nath v. Mohini Mohan* (1954) C. 73.

45P. Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

Reserve Bank to tender advice in winding up proceedings.

"It reproduces the previous s. 45D"—*Notes on Clauses*.

45Q. (1) The Reserve Bank shall, on being directed so to do by the Central Government or by the High Court, cause an inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.

Power to inspect.

(2) On such inspection, the Reserve Bank shall submit its report to the Central Government and the High Court.

(3) If the Central Government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.

BANKING COMPANIES ACT

(4) On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Central Government under sub-section (3), the High Court may, if it deems fit, after giving notice to and hearing the Central Government in regard to the report, give such directions as it may consider necessary.

"It provides for a closer supervision by the Reserve Bank over banking companies in liquidation"—*Notes on Clauses.*

45R. The Reserve Bank may, at any time by a notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

Power to call for returns and information.

Explanation.—For the purposes of this section and section 45Q, a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be a banking company which is being wound up.

"This would enable the Reserve Bank to keep itself in touch with liquidation proceedings and schemes of arrangement and would enable Government to decide when an inspection of any such bank is necessary"—*Notes on Clauses.*

45S. (1) For the purpose of enabling the official liquidator or the special officer appointed under sub-section (3) of section 37 to take into his custody or under his control, all property, effects and actionable claims to which a banking company, which has been ordered to be wound up, is or appears to be entitled, the official liquidator or the special officer, as the case may be, may request in writing the chief presidency magistrate or the district magistrate, within whose jurisdiction any property, books of account or other documents of such banking company may be situate or be found, to take possession thereof, and the chief presidency magistrate or the district magistrate, as the case may be, shall, on such request being made to him, take possession of such property, books of account or other documents and forward them to the official liquidator or the special officer.

Chief presidency magistrate and district magistrate to assist official liquidator in taking charge of property of banking company being wound up.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the chief presidency magistrate or the district magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

It reproduces the previous section 45E with slight-modifications—*Notes on Clauses.*

45T. (1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

Enforcement of orders and decisions of High Court.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (Act V of 1908), a liquidator may apply for the execution of a decree by a court other than the one which made it on production of a certificate granted under sub-section (6) of section 45D and on his certifying to such other court in writing the amount remaining due or relief remaining unenforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court may, with the leave of the High Court, be recovered in the same manner as an arrear of land revenue.

Sub-s (1) reproduces the previous s 45H Sub-s (2) and sub-s (3) are intended to expedite execution of orders and decrees passed against debtors—*Notes on Clauses.*

55. Scope. This section makes special provision for enforcement of orders made in a civil proceeding under the Companies Act, and the Court which winds up the company and passes orders referred to in the present section, may execute the orders in the manner provided by the C P Code, and if necessary, it may transfer the order to any Court for execution—*Bharati Central Bank v Rathindras* (1950) 54 C W N 975 In matters of executions such orders are treated as if they were decrees, and all the provisions of the C P Code relating to the execution of decrees are applicable to the execution of such orders—*ibid.*

An enforcement order calling up on the contributory to pay is an order which is executable under s 199 of the Companies Act, 1913 and the present section, as a decree under the C P Code, by attachment and sale by the High Court—*Dhokuria Banking Corpn v Sarabala* (1953) C 610

45U. The High Court may make rules consistent with this Act and the rules made under section 52 prescribing—

Power of High Court to make rules.

(a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held;

(b) the offences which may be tried summarily;

(c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard;

(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

"It deals with the rule-making powers of the High Court"—*Notes on Clauses.*

45V. For the removal of doubts it is hereby declared that

References to directors, etc., shall be construed as including references to past directors, etc.

any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company.

"Obviously, provisions which are intended to apply to a bank which is carrying on normal business cannot be applicable to a bank in liquidation"—*Notes on Clauses.*

Part II not to apply to banking companies being wound up.

45W. Nothing contained in Part II shall apply to a banking company which is being wound up.

"Certain proceedings pending before courts other than the High Court which ought to have been transferred to the High Court have not been so transferred. This seeks to validate all such proceedings"—*Notes on Clauses.*

45X. Notwithstanding anything contained in section 45B

Validation of certain proceedings.

or any other provision of this Part or in section 11 of the Banking Companies (Amendment) Act, 1950 (XX of 1950), no proceeding held, judgment delivered or decree or order made before the commencement of the Banking Companies (Amendment) Act, 1953, by any court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a court other than the High Court "

PART IV

MISCELLANEOUS.

46. (1) Whoever in any return, balance-sheet or other document "or in any information required or furnished" by or under or for the purposes of any provision of this Act, wilfully makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Penalties.

(2) If any person fails to produce any book, account or other document or to furnish any statement or information which under sub section (2) of section 35 it is his duty to produce or furnish, or to answer any question relating to the business of a banking company which he is asked by an officer making an inspection under that section, he shall be punishable with a fine which may extend to five hundred rupees in respect of each offence, and if he persists in such refusal, to a further fine which may extend to fifty rupees for every day during which the offence continues.

(3) If any deposits are received by a banking company in contravention of an order under clause (a) of sub-section (4) of section 35, every director or other officer of the banking company, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent it, shall be deemed to be guilty of such contravention and shall be punishable with a fine which may extend to twice the amount of the deposits so received.

(4) If any other provision of this Act is contravened, or if any default is made in complying with any requirement of this Act, or of any order "or direction" made thereunder, every director and other officer of the banking company who is knowingly a party to the contravention or default shall be punishable with a fine not exceeding five hundred rupees, and where the contravention or default is a continuing one, with a further fine not exceeding fifty rupees for every day during which it continues.

(5) Without prejudice to the provisions of sub-section (4),

if any banking company fails to comply with the provisions of section 24 or section 25, the Reserve Bank shall by notice in writing make a demand on the banking company to comply with the said provisions within thirty days from the receipt of the notice, and if the banking company fails so to do, the Reserve Bank may apply under section 38 for the winding up of the banking company.

This was clause 45 of the Bill. This section provides for penalties in the event of non-compliance with the provisions of the Act—*Notes on Clauses*.

Compare ss. 236, 237, 238A and 282 of the Companies Act, 1913 (now ss. 539, 545, 538 and 628 respectively of the Companies Act, 1956).

Amendments.—In sub-s. (1) of this section the words within inverted commas were substituted for the word “required”; and in sub-s. (4) the words within inverted commas were added by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957.

“46A. Every chairman, director, auditor, liquidator, manager and any other employee of a banking company shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.”

Chairman, director, etc., to be public servants for the purposes of Chapter IX of the Indian Penal Code.

This new section was inserted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957. For the Objects and Reasons of the Amendment Act, see N. 6 “Subsequent Amendments”.

47. No Court shall take cognizance of any offence punishable under section 46 except upon complaint in writing made by an officer of the Reserve Bank generally or specially authorised in writing in this behalf by the Reserve Bank, and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any such offence.

This was clause 46 of the Bill. This section is based on s. 278 of the Indian Companies Act—*Notes on Clauses*.

See s. 278 of the Companies Act, 1913 (now ss. 622-24 of the Companies Act, 1956).

48. A Court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Application of fines.

This was clause 47 of the Bill. This section is based on s. 279 of the Indian Companies Act—*Notes on Clauses*.

See s. 279 of the Companies Act, 1913 (now s. 626 of the Companies Act, 1956).

49. The exemptions, whether express or implied, in favour of a private company in “sections 90, 165 and 255, clauses (a) and (b) of sub-section (1) of section 293 and sections 300 and 416 of the Companies Act, 1956”, shall not operate in favour of a private company which is a banking company.

Special provisions for private banking companies.

This was clause 48 of the Bill. The Indian Companies Act exempts private companies from several of its provisions. Some of these have been made applicable to private companies—*Notes on Clauses.*

Amendment.—In this section the words and figures within inverted commas were substituted for the words and figures “sections 17, 77, 83B, 86H, 91B, 91D and sub-section (5) of section 144 of the Indian Companies Act, 1913 (VII of 1913)” by the Banking Companies (Amendment) Act 95 of 1956.

See notes to cl (iii) of sub-s. (1) of s. 3 of the Companies Act, 1956

This section practically relegates private *banking* companies to the position of public companies.

50. No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any of the provisions “contained in sections 10, 12A, 16, 35A, 35B and 36 or by reason of the compliance by a banking company with any order or direction given to it under this Act”.

Certain claims for compensation barred.

This was clause 49 of the Bill “The operation of the provisions contained in clauses 11 (now s 10), 16 and 35(1)(d)(ii) [now s. 36(1)(d)(ii)] may result in an individual losing a perhaps lucrative appointment. It has, therefore, been made clear that he will have no right of action on that account”—*Notes on Clauses.*

Clause 50 of the Bill relating to banking companies incorporated in certain Acceding States was omitted by the Select Committee for the provision was no longer necessary as almost all Acceding States had acceded to the Dominion in respect of banking and sub-s. (2) of s 1 *ante* had already made the necessary provision in this behalf.

Amendment—In this section the words and figures within inverted commas were substituted for the words, brackets, figures and letter “contained in sections 10 and 16 or by reason of the compliance by a banking company with any order given to it under sub-clause (ii) of clause (d) of sub-section (1) of section 36”, by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957.

“51. Without prejudice to the provisions of the State Bank of India Act, 1955, the provisions of sections 10, 13 to 17, 19 to 21, 23 to 31, “34, 35, 36 [excluding clause (d) of sub-section (1)], 37, 45, 46 to 48, 50, 52 and 53 shall also apply, as far as may be, to and in relation to the State Bank

Application of certain provisions to the State Bank of India.

of India as they apply to and in relation to other banking companies:

Provided that nothing contained in section 46 shall apply to any directors nominated under clauses (e) and (f) of section 19 of the State Bank of India Act, 1955".

The constitution of the State Bank of India is regulated by the State Bank of India Act, 1955.

The new s 51 was substituted for the old s 51 by the State Bank of India Act, 1955. Then for the figures and words "34 to 36" the figures and words "34, 35, 36 (excluding clause (d) of sub-section (1))" were substituted by the Banking Companies (Amendment) Act 95 of 1956 which came into force on 14th January, 1957

52. (1) The Central Government may, after consultation with the Reserve Bank, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act and all such rules shall be published in the official Gazette.

Power of Central Government to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the details to be included in the returns required by this Act and the manner in which such returns shall be submitted, "and the form in which the official liquidator may file lists of debtors to the Court having jurisdiction under Part III or Part IIIA and the particulars which such lists may contain and any other matter which has to be, or may be prescribed "

(3) All rules made under this section shall be subject to the condition of previous publication, and the date to be specified under clause (3) of section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than six months from the date on which the draft of the proposed rules was published:

Provided that in respect of the first occasion on which rules are made under this section, the provisions of this sub-section shall not apply.

"(4) The Central Government may by rules made under this section annul, alter or add to, all or any of the provisions of the Fourth Schedule".

This section empowers the Central Government to make regulations under the Act after consultation with the Reserve Bank—*Notes on Clauses.*

The Select Committee observed: "In our opinion the Bill should be brought into force as early as possible and therefore the conditions of previous publication should not apply in respect of the first occasion on which rules are made. This clause has been modified accordingly."

Amendment.—In this section the portion within inverted commas in sub-s (2) has been added by the Banking Companies (Amendment) Act 52 of 1953 and after sub-s (3) the new sub-s. (4) has been inserted, *ibid* The formal amendment is consequential and sub-s. (4) has been inserted to confer powers on the Central Government to frame rules consistent with s 45D for the effective implementation of the scheme of settlement of list of debtors—*Notes on Clauses.*

The rules made by the Central Government under this section have been printed *post* after the Schedules to this Act.

53. The Central Government may, on the recommendation of the Reserve Bank, declare, by notification in the official Gazette, that any or all of the provisions of this Act shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

Power to exempt in certain cases.

This section was added by the Select Committee with the following observation:—“This is a provision which we have added as a matter of caution. It is possible that exemptions may be needed in the case of industrial finance corporations, land mortgage banks, housing societies, and other like institutions which obtain deposits from the public. This provision would also enable temporary relief to be given in cases of emergency.”

In exercise of the powers conferred by this section and on the recommendation of the Reserve Bank of India the Central Government has been pleased to make certain exemptions noted under the relevant sections

As to the non-applicability of certain sections of the Act for certain years to a banking company which has been incorporated in any Part B State and which has confined its activities to Part B States, see Notification No SRO 1364/11 9 1951 in the Gazette of India dated 15 9 1951, Part II, Sec 3, page 1427

54. (1) No suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for anything which is in good faith done or intended to be done in pursuance of this Act.

Protection of action taken under Act.

(2) Save as otherwise expressly provided by or under this Act, no suit or other legal proceeding shall lie against the Central Government, the Reserve Bank or any officer for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act.

55. The Reserve Bank of India Act, 1934 (II of 1934) shall be amended in the manner specified in the fourth column of the First Schedule, and the amendments to section 18 thereof as specified in the said Schedule shall be deemed to have had effect on and from the 20th day of September, 1947,

Amendment of Act II of 1934.

The Banking Companies (Control) Ordinance was published in the Gazette of India Extraordinary dated 18th September, 1948, and it appears that the Ordinance came into force on that date.

56. (1) The enactments mentioned in the third column of the Second Schedule shall be repealed to the extent specified in the fourth column thereof.

Repeals.

(2) Notwithstanding the repeal by this Act of any Ordinance mentioned in the Second Schedule, anything done or any action taken, in the exercise of any power conferred by any Ordinance so repealed, shall for all purposes be deemed to have been done or taken in the exercise of powers conferred by this Act as if this Act had been in force on the day such thing was done or such action was taken.

56. Effect of repeal.—See ss 6, 6A and 24 of the General Clauses Act, 1897.

THE FIRST SCHEDULE

(See section 55)

AMENDMENTS

Year. 1	No. 2	Short title 3	Amendments. 4
1934	II	The Reserve Bank of India Act, 1934.	<p>(1) In section 17, to clause (15A), the following shall be added, namely:— “and under the Banking Companies Act, 1949.”</p> <p>(2) (a) Section 18 shall be renumbered as sub-section (1) of that section and in sub-section (1), as so renumbered,—</p> <p>(i) in clause (3), after the words “of that section”, the following words shall be added, namely:— “or, when the loan or advance is made to a banking company, as defined in the Banking Companies Act, 1949, against such other form of security as the Bank may consider sufficient”;</p> <p>(ii) for the words “under this section” wherever they occur, the words “under this sub-section” shall be substituted;</p>

Year. 1	No. 2	Short title. 3	Amendments. 4
			<p>(b) After sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—</p> <p>"(2) Where a banking company to which a loan or advance has been made under the provisions of clause (3) of sub-section (1) is wound up, any sums due to the Bank in respect of such loan or advance, shall, subject only to the claims, if any, of any other banking company in respect of any prior loan or advance made by such banking company against any security, be a first charge on the assets of the banking company."</p> <p>(3) In section 42, for sub-section (6) the following sub-section shall be substituted, namely:—</p> <p>"(6) The Bank shall, save as hereinafter provided, by notification in the Gazette of India,—</p> <p>(a) direct the inclusion in the Second Schedule of any bank not already so included which carries on the business of banking in any "State" of India and which—</p> <p>(i) has a paid-up capital and reserves of an aggregate value of not less than five lakhs of rupees, and</p> <p>(ii) satisfies the Bank that its affairs are not being conducted in a manner detrimental to the interests of its depositors, and</p> <p>(iii) is a company as defined in clause (2) of section 2 of the Indian Companies Act, 1913 (VII of 1913) or a corporation or a company incorporated by or under any law in force in any place outside India;</p> <p>(b) direct the exclusion from that Schedule of any scheduled bank,—</p> <p>(i) the aggregate value of whose paid-up capital and reserves</p>

Year. 1	No. 2	Short title. 3	Amendments. 4
			<p>becomes at any time less than five lakhs of rupees, or</p> <p>(ii) which is, in the opinion of the Bank after making an inspection under section 35 of the Banking Companies Act, 1949, conducting its affairs to the detriment of the interests of its depositors, or</p> <p>(iii) which goes into liquidation or otherwise ceases to carry on banking business:</p> <p>Provided that the Bank may, on application of the scheduled bank concerned and subject to such conditions, if any, as it may impose, defer the making of a direction under sub-clause (i) or sub-clause (ii) of clause (b) for such period as the Bank considers reasonable to give the scheduled bank an opportunity of increasing the aggregate value of its paid-up capital and reserves to not less than five lakhs of rupees or, as the case may be, of removing the defects in the conduct of its affairs;</p> <p>(c) alter the description in that Schedule whenever any scheduled bank changes its name.</p> <p><i>Explanation.</i>—In this sub-section the expression "value" means the real or exchangeable value and not the nominal value which may be shown in the books of the bank concerned; and if any dispute arises in computing the aggregate value of the paid-up capital and reserves of a bank, a determination thereof by the Bank shall be final for the purposes of this sub-section."</p>

BANKING COMPANIES ACT

THE SECOND SCHEDULE

(See section 56)

REPEALS

Year. 1	No. 2	Short title 3	Extent of repeal 4
1913	VII	The Indian Companies Act, 1913.	The whole of Part XA.
1946	XXVII	The Banking Companies (Restriction of Branches) Act, 1946.	The whole.
1946	IV	The Banking Companies (Inspection) Ordinance, 1946	The whole.
1948	XXV	The Banking Companies (Control) Ordinance, 1948.	The whole

THE THIRD SCHEDULE

(See section 29)

FORM A

FORM OF BALANCE-SHEET

CAPITAL AND LIABILITIES

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

Rs. A. P. Rs. A. P.

(1) CAPITAL (a)—

Authorised Capital....

Shares of Rs....each

Issued Capital.....

Shares of Rs....each

Subscribed Capital....

Shares of Rs....each

Amount called up at

Rs.....per share .

Less calls unpaid . .

Add forfeited shares .

(2) RESERVE FUND AND OTHER
RESERVES(3) DEPOSITS AND OTHER
ACCOUNTS:

(1) CASH:

In hand and with Re-
serve Bank and State
Bank of India (in-
cluding foreign cur-
rency notes) . . .(2) Balances with other
Banks (showing whe-
ther on deposit or
current account): .

(i) in India . .

(ii) outside India .

(3) MONEY AT CALL AND
SHORT NOTICE . .(4) INVESTMENTS (stating
mode of valuation,
e.g., cost or market
value.) (f) . . .

(i) Securities of

FORM A.—Contd.

CAPITAL AND LIABILITIES

Rs. A. P. Rs. A. P.

Fixed Deposits . . .
Savings Bank Deposits
Current Accounts, Con-
tingency Accounts, etc.

- (4) BORROWINGS FROM
OTHER BANKING COM-
PANIES, AGENTS, ETC.: .
(i) in India . . .
(ii) outside India .

Particulars:

- (i) Secured (stating
the nature of
security) . . .
(ii) Unsecured . . .
(5) BILLS PAYABLE . . .
(6) BILLS FOR COLLECTION
BEING BILLS RECEIVABLE
AS *per contra*: . . .
(i) payable in India
(ii) payable outside
India . . .
(7) OTHER LIABILITIES (c)
(8) ACCEPTANCES, ENDORSE-
MENTS AND OTHER OBLI-
GATIONS *per contra*. . .

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

the Central and
State Gov-
ernments and
other Trustee
securities in-
cluding Trea-
sury Bills of
the Central and
State Govern-
ments . . .

- (ii) Shares (classi-
fying into pre-
ference, ordi-
nary, deferred
and other
classes of sha-
res and show-
ing separately
shares fully
paid up and
partly paid up)
(iii) Debentures or
Bonds . . .
(iv) Other invest-
ments (to be
classified under
proper heads)
(v) Gold . . .

- (5) ADVANCES (other than
bad and doubtful
debts for which pro-
vision has been made
to the satisfaction of
the auditors) . . .
(I) Loans, Cash Credits,
Overdrafts etc. . .
(i) in India . . .
(ii) outside India . . .
(II) Bills discounted and
purchased (excluding
Treasury Bills of the
Central and State
Governments) . . .
(i) payable in India . . .
(ii) payable outside
India . . .

BANKING COMPANIES ACT

FORM A.—*Contd.*

CAPITAL AND LIABILITIES

Rs. A. P. Rs. A. P.

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

Particulars of Advances

- (i) Debts considered good in respect of which the banking company is fully secured . . .
- (ii) Debts considered good for which the banking company holds no other security than the debtor's personal security . . .
- (iii) Debts considered good, secured by the personal liabilities of one or more parties in addition to the personal security of the debtors . . .
- (iv) Debts considered doubtful or bad, not provided for .
- (v) Debts due by directors or officers of the banking company or any of them either severally or jointly with any other persons . . .
- (vi) Debts due by companies or firms in which the directors of the banking

FORM A.—*Contd.*

CAPITAL AND LIABILITIES

Rs. A. P. Rs. A. P.

(9) PROFIT AND LOSS

Profit as per last balance
sheetLess appropriations
thereof

 Add profit for the year
brought from the Pro-
fit and Loss Account

(10) CONTINGENT LIABILITIES. (d) . . .

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

 company are
interested as
directors, part-
ners or manag-
ing agents or,
in the case of
private com-
panies, as mem-
bers . .

 (vii) Maximum total
amount of ad-
vances includ-
ing temporary
advances made
at any time
during the year
to directors or
managers or
officers of the
banking com-
pany or any of
them either se-
verally or joint-
ly with other
persons (ff) .

 (viii) Maximum total
amount of
advances, in-
cluding tempo-
rary advances
granted during
the year to the
companies or
firms in which
the directors of
the banking
company are
interested as
directors, part-
ners or manag-
ing agents or,
in the case of
private com-
panies, as
members (ff) .

 (ix) Due from bank-
ing companies

BANKING COMPANIES ACT

FORM A.—*Contd.*

CAPITAL AND LIABILITIES

PROPERTY AND ASSETS

Rs. A. P. Rs. A. P.

Rs. A. P. Rs. A. P.

- (6) BILLS RECEIVABLE BE-
ING BILLS FOR COLLEC-
TION AS *per contra*:
(i) payable in India
(ii) payable outside
India . . .

- (7) CONSTITUENTS' LIA-
BILITIES FOR ACCEPT-
ANCES, ENDORSEMENTS
AND OTHER OBLIGA-
TIONS *per contra* . .

- (8) PREMISES LESS DEPRE-
CIATION (g) . . .

- (9) FURNITURE AND FIX-
TURES LESS DEPRE-
CIATION (g) . . .

- (10) OTHER ASSETS, INCLUD-
ING SILVER (to be
specified) (h) . .

- (11) NON-BANKING ASSETS
ACQUIRED IN SATIS-
FACTION OF CLAIMS
(stating mode of
valuation) (i) . .

- (12) PROFIT AND LOSS .

TOTAL

TOTAL

NOTES

(a) *Capital*:—

- (i) The various classes of capital, if any, should be distinguished.
(ii) Shares issued as fully paid-up pursuant to any contract without payments being received in cash should be stated separately.
(iii) Where circumstances permit, issued and subscribed capital and amount called up may be shown as one item, *e.g.*, Issued and Subscribed Capital. . . . Shares of Rs . . . paid up.
(iv) In the case of banking companies incorporated outside India, the amount of deposit kept with the Reserve Bank of India under sub-section (2) of section 11 of the Banking Companies Act, 1949, should be shown under this head; the amount, however, should not be extended to the outer column.

[(b) *omitted*].

- (c) Under this heading may be included such items as the following: pension

or insurance funds, unclaimed dividends, advance payments and unexpired discounts, liabilities to subsidiary companies and any other liabilities.

(d) These should be classified under the following categories:—

- (i) Claims against the banking company not acknowledged as debts.
- (ii) Money for which the banking company is contingently liable showing separately the amount of any guarantee given by the banking company on behalf of directors or officers.
- (iii) Arrears of cumulative preference dividends.
- (iv) Liability on Bills of Exchange re-discounted.
- (v) Liability on account of outstanding Forward Exchange Contracts.

[(e) omitted]

(f) Where the value of the investments shown in the outer column of the balance-sheet is higher than the market value, the market value shall be shown separately in brackets.

(g) Maximum total outstanding balance in all such accounts as on any day during the year should be given under this heading.

(g) Premises wholly or partly occupied by the banking company for the purposes of business should be shown against "Premises less depreciation". In the case of fixed capital expenditure, the original cost, and additions thereto and deductions therefrom during the year should be stated, as also the total depreciation written off. Where sums have been written off on a reduction of capital or revaluation of assets, every balance-sheet after the first balance-sheet subsequent to the reduction or revaluation should show the reduced figures with the date and amount of the reduction made. Furniture, fixtures and other assets which have been completely written off need not be shown in the balance-sheet.

(h) Under this heading may be included such items as the following, which must be shown under headings suitably described: preliminary, formation and organisation expenses, development expenditure, commission and brokerage on shares, interest accrued on investments but not collected, investments in shares of subsidiary companies and any other assets.

(i) Value shown shall not exceed the market value and in cases where the market value is not ascertainable the estimated realisable value.

[N.B. In exercise of the powers conferred by s 53 the Central Government has declared that the provisions of note (f) shall not apply, until 1st January, 1956 to a banking company which, when the value shown in the inner column against any of the sub-heads (ii), (iii), (iv) and (v) of item 4 on the Property and Assets side exceeds the market value of the investments under the sub-head, shows separately within brackets the market value of the investments under that sub-head.]

FORM B

FORM OF PROFIT AND LOSS ACCOUNT

Profit and Loss Account for the year ended December . . .

EXPENDITURE

INCOME* (LESS PROVISIONS MADE DURING THE YEAR FOR BAD AND DOUBTFUL DEBTS AND OTHER USUAL OR NECESSARY PROVISIONS)

Rs. A. P.

Rs. A. P.

- (1) Interest paid on deposits, borrowings etc. . . .
- (2) Salaries and Allowances and

- (1) Interest and Discount . . .
- (2) Commission, Exchange and Brokerage

Provident Fund (showing separately salaries and allowances to managing director or manager; or chief executive officer)	(3) Rents
(3) Directors' and Local Committee members' fees and allowances	(4) Net profit on sale of investments, gold and silver, land, premises and other assets (not credited to Reserves or any particular Fund or Account)
(4) Rent, Taxes, Insurance, Lighting etc.	(5) Net profit on revaluation of investments, gold and silver, premises and other assets (not credited to Reserves or any particular Fund or Account)
(5) Law Charges	(6) Income from non-banking assets, and profit from sale of or dealing with such assets .
(6) Postage, Telegrams and Stamps	(7) Other receipts
(7) Auditors' fees	(8) Loss (if any)
(8) Depreciation on and repairs to the banking company's property	
(9) Stationery, Printing, Advertisement, etc.	
(10) Loss from sale of or dealing with banking assets	
(11) Other Expenditure	
(12) Balance of Profit	
TOTAL _____	TOTAL _____

* Net loss on sale or revaluation of investments, gold and silver, land premises and other assets, if any, may be deducted from income.

"THE FOURTH SCHEDULE

[See section 45D (2)]

LIST OF DEBTORS

1. The official liquidator shall from time to time submit lists of debtors to the High Court, each list being verified by an affidavit.

2. Every such list shall contain the following particulars:—

- (a) names and addresses of the debtors;
- (b) amount of debt due to the banking company by each debtor;
- (c) rate of interest, if any, and the date up to which such interest has been calculated in the case of each debtor;
- (d) description of papers, writings and documents, if any, relating to each debt;
- (e) relief or reliefs claimed against each debtor.

3. (a) In every such list, the official liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debts for which no security or only a personal security is given;

(b) In the case of secured debts, particulars of the securities claimed by the banking company, and whenever possible their estimated value, and the names and addresses of person or persons, if any, having an interest in the securities or the right of redemption therein;

(c) In case the debt is guaranteed by any person or persons, the name and address of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and description of documents, papers or writings in support of such guarantee.

4. If the debtor is adjudged insolvent either before or after he has been included in any such list, but before such list is settled, the name and address of the assignee or the receiver of his estate, as the case may be, should be stated in, or added to, the list.

5. If the original debtor dies either before or after he has been included in any such list, but before such list is settled, there shall be substituted in his place the names and addresses of his legal representatives as far as the official liquidator is able to ascertain."

Note. "This Schedule specifies the particulars which an application for the settlement of the list of debtors should contain"—*Notes on Clauses.*

For the original Fourth Schedule this new Fourth Schedule was substituted by the Banking Companies (Amendment) Act 52 of 1953 which came into force on 30th December, 1953.

APPENDIX A

BANKING COMPANIES RULES, 1949.

(Published in the Gazette of India of 26th March, 1949, Part I pp. 389 to 401.)

No. F. 4(55)-F. 1/49 —In exercise of the powers conferred by section 52 of the Banking Companies Act, 1949 (X of 1949), and after consultation with the Reserve Bank, the Central Government is pleased to make the following rules.

1. *Short title and commencement.*—(1) These rules may be called the Banking Companies Rules, 1949.

1A. They extend to the whole of India.

2. *Interpretation.*—(1) In these rules,

(a) "the Act" means the Banking Companies Act, 1949,

(b) "principal office of the Reserve Bank" means the office of the Reserve Bank to which the returns prescribed under the Act or these rules are required to be submitted;

(c) "principal office of the banking company" means the office of the banking company which will be responsible for the submission of returns prescribed under the Act or these rules;

(d) "quarter" means a period of three months ending on the last day of March, June, September or December of any year; and

(e) "place of business" of a banking company includes any sub-office, pay office, sub-pay office or any place of business at which deposits are received, cheques cashed or moneys lent;

(f) "commencement of these rules" means—

(i) in the case of merged territories in Part A States, the States of Hyderabad, Mysore, Travancore-Cochin, Bhopal, Manipur and Tripura and those parts of the State of Rajasthan which formerly comprised in the Indian States of Jaipur, Bikaner, Jaisalmer and Jodhpur, such date or dates as the Central Government may by notification in the Official Gazette specify in this behalf;

(ii) in any other case, the 26th day of March, 1949.

3. *Submission of returns.*—(1) A return prescribed under the Act or these rules shall be submitted in the form prescribed for the purpose or as near thereto as circumstances admit.

(2) Such return shall be submitted in the manner hereinafter provided:—

(i) By a banking company incorporated in India, from its registered office to the office of the Reserve Bank situated in the State in which the banking company has its registered office.

(ii) By a banking company incorporated outside India and having a principal place of business as declared in terms of Section 277(1) (e) of the Indian

[Note. In the areas specified in Rule 2(1) (f) (i), these Rules came into force on 22nd November, 1952—*vide* Notification No. S.R.O. 1910 of 17th November, 1952.]
[(2) omitted.]

Companies Act [now s. 592(1) (e) of the Companies Act, 1956], from that principal place of business to the office of the Reserve Bank situated in the State in which the banking company has its principal place of business.

(iii) In any other case, from such office of the banking company to such office of the Reserve Bank as may be specified by the Reserve Bank on an application to be made in this behalf to the Reserve Bank of India, Department of Banking Operations at Bombay.

(iv) Notwithstanding any thing contained in clauses (i), (ii) and (iii) the Reserve Bank may, at any time, direct that the returns prescribed under the Act or these rules shall be submitted from any specified office of a banking company to any specified office of the Reserve Bank.

(3) Wherever a return prescribed under the Act or these rules relates to a particular day or date, and where such day or date is not a holiday for all the offices of a banking company, the return shall be prepared on the basis of the figures of that day or date in respect of offices working on that day or date, and the preceding working day's figures in respect of offices where that day or date is a holiday.

(4) A banking company shall, within one month from the commencement of these rules or from the commencement of business, whichever is later, intimate to the principal office of the Reserve Bank, the address of its principal office and shall intimate to that office any change in such address within one month of such change.

4. *List of Officers*.—(1) (i) A banking company shall, not later than one month from the commencement of these rules or from the commencement of business, whichever is later, send to the principal office of the Reserve Bank a written statement containing a list of

(a) the names, the official designations and specimen signatures of the officers authorised to sign on behalf of the banking company returns required under the Act or these rules and

(b) the names and addresses of the directors of the banking company.

(ii) Any change in the list referred to in clause (i) of this sub-rule shall be intimated to the principal office of the Reserve Bank within one month from the occurrence of such change.

(2) A banking company incorporated outside India, which at the commencement of these rules has a place of business in India, and every such company which after the commencement of these rules establishes such a place of business within India, shall, within one month from the commencement of these rules or from the establishment of such place of business, as the case may be, furnish to the principal office of the Reserve Bank the full address of the principal place of business declared in terms of Section 277 (1) (e) of the Indian Companies Act [now s. 592 (1) (e) of the Companies Act, 1956] and the name and address of one or more persons resident in India authorised to accept on behalf of the company any notice or order required to be served on the company under the Act or these rules and shall intimate to the principal office of the Reserve Bank any change in such name or address within one month of the occurrence of the change:

Provided that information furnished by a banking company under Rule 4 of the Banking Companies (Control) Rules, 1948, shall be deemed to have been furnished under this rule,

5. *Remuneration paid to directors and officers*.—A banking company shall, not later than the 31st January each year, send to the principal office of the Reserve Bank

a statement in Form I showing the remuneration paid during the previous calendar year to the directors and officers of the company specified therein.

6. *Deposits*.—(1) The deposits specified in sub-section 2 of section 11 of the Act shall be maintained at the principal office of the Reserve Bank:

Provided that if a banking company desires to keep either the whole or part of the deposit in sterling securities, such securities will be held at the London office of the Reserve Bank, which shall hold it on behalf of the principal office of the Reserve Bank.

(2) The value of each security deposited under sub-rule (1) shall be estimated at its market rate, ex-dividend.

(3) Deposits in sterling securities shall not be brought on the books of the principal office of the Reserve Bank until that office has received an intimation from the London office of the Reserve Bank and the date on which such deposits are brought on the books of the principal office of the Reserve Bank shall be the date of deposit for the purposes of sub-section (2) of section 11 of the Act.

(4) Securities shall be duly transferred to the Reserve Bank by the banking company.

(5) Upon receipt of a deposit under sub-rule (1) or of an intimation of deposit under sub-rule (3), the principal office of the Reserve Bank shall, as soon as possible, send to the principal office of the banking company a certificate in Form II.

(6) The market value of sterling securities shall be converted at 1s. 6d. to the rupee.

7. *Withdrawals of deposits*.—The principal office of the Reserve Bank shall not be bound to return securities actually deposited, but may substitute therefor new scrip of securities of the same description and amount.

8. *Changes in deposits*.—(1) The London office of the Reserve Bank will permit the withdrawal of sterling securities only under instructions from the principal office of the Reserve Bank.

(2) When the form or amount of deposit is changed by reason of a subsequent deposit or withdrawal, the principal office of the Reserve Bank shall, as soon as possible, send to the principal office of the banking company a fresh certificate in Form II.

9. *Maturing of security deposits*.—When a security in deposit matures or when any yield on such a security ceases to accrue, the principal office of the Reserve Bank shall not be bound to inform the banking company; but upon the receipt of a requisition in writing from the banking company, the principal office of the Reserve Bank shall, as soon as possible, collect the discharge value and hold the amount in deposit for purposes of sub-section (2) of section 11 of the Act.

10. *Interest on deposits*.—(1) No interest shall be payable on cash deposits.

(2) Interest on sterling securities will on realisation be credited, if so desired, as soon as possible, to an account in London, subject to the usual charges. In other cases such interest will be remitted by the London office to the principal office of the Reserve Bank at the prevailing rate of exchange after deduction of the usual charges.

(3) The principal office of the Reserve Bank shall credit, as soon as possible, the current account of the banking company maintained with it with the interest realised on rupee securities, subject to the usual charges, and with the amounts received, if any, from the London office of the Reserve Bank under sub-rule (2).

11. *Licensing of banking Companies*.—A company desiring to have a licence under Section 22 of the Act shall apply to the principal office of the Reserve Bank in a form specified below, namely:

- (a) in the case of a company incorporated in India and desiring to commence banking business, in Form V.
- (b) in the case of a company incorporated in India and in existence at the commencement of the Act, in Form VI and
- (c) in the case of a company incorporated outside India and desiring to commence/carry on banking business in India in Form VII.

12. *Opening of new places of business*—An application by a banking company for permission to open a new place of business or change the location of an existing place of business under section 23 of the Act shall be submitted to the principal office of the Reserve Bank in Form VIII.

13. *List of offices*.—A banking company shall, within a period of one month from the close of every quarter, send to the principal office of the Reserve Bank a list in Form IX of all its offices in India at which it was doing business during that quarter.

14. *Publication of approved currencies and securities*—(1) The Reserve Bank shall, not later than one month from the commencement of these rules, by notification in the Gazette of India, publish for the purpose of section 25 of the Act a list of currencies in which export bills drawn in and payable in India may be expressed.

(2) The Reserve Bank may, by notification in the Gazette of India, publish for the purpose of section 25 of the Act, a list of securities approved by it.

(3) Any alteration in the lists referred to in sub-rules (1) and (2) shall also be published in the Gazette of India.

(4) An alteration, adding a currency or security to the list, shall take effect from the date of publication of the alteration while an alteration, omitting a currency or security from the list, shall take effect at the expiry of three months from the date of publication of the alteration.

15. *Manner of publication of accounts and balance sheet*.—The balance sheet and profit and loss account prepared in terms of section 29 of the Act together with the auditor's report shall be published within a period of six months from the end of the period to which they relate in a newspaper which is in circulation at the place where the banking company has its principal office.

Explanation.—For the purposes of this rule, the expression "newspaper" means any newspaper or journal published at least once a week, but does not include a journal other than a banking, commercial, financial or economic journal.

15A. The list of debtors under Section 45D of the Act shall be in form XIV or as near thereto as circumstances permit.

[*Note*—This Rule was inserted by S.R.O 3501 dated 24. 11. 1954 (*vide* Gazette of India dated 4 12 1954, Part II—Sec. 3, page 2727).

16. *Power to exempt in certain cases*.—The Central Government may, on the recommendation of the Reserve Bank, declare by notification in the official Gazette that any or all of the provisions of these rules shall not apply to any banking company or to any class of banking companies either generally or for such period as may be specified.

THE BANKING COMPANIES ACT, 1949

FORM 1 (See Rule 5)

(SECTION 10)

(To be submitted not later than 31st January each year)

Name of the banking company—

Name and designation of the officer submitting the return—

BANKING COMPANIES ACT

Remuneration* paid to the directors and the first ten highest paid officers of the banking company in India during the year ended the 31st December_____

Name	Age	Qualifications	Experience	Designation	Remuneration* during the year ended the 31st December 19__
1	2	3	4	5	6

Date_____

Signature_____

THE BANKING COMPANIES ACT, 1949

FORM II (See Rules 6 and 8)

(SECTION 11)

Reserve Bank of India

No._____

Place_____

Date_____

Certified that the Reserve Bank of India held on behalf of_____the undernoted deposits in terms of section 11(2) of the Banking Companies Act, 1949 as at the close of business on_____

1	Cash 2	Approved Securities		Remarks 5
		Loan 3	Face Value 4	

TOTAL

(In figures and words separately for cash, and approved securities.)

MANAGER

NOTE—The issue of this certificate renders any previous certificate issued by the Reserve Bank null and void.

* Remuneration includes salary, house allowance, dearness allowance, conveyance allowance, local allowance and all other forms of allowances, bonus, contribution made by the employer to provident or pension funds, taxes paid on behalf of officers, fees and allowance to directors, etc.

THE BANKING COMPANIES ACT, 1949

FORM III

(SECTION 18)

Name of the banking company_____

Name and designation of the officer submitting the return_____

Statement of cash reserve as at the close of business on the following days of the month of_____

(To be filed in triplicate with the Reserve Bank before the fifteenth day of the month succeeding that to which the return relates.)

(Rounded off to the nearest thousand)

1st	2nd	3rd	4th	5th
Friday	Friday	Friday	Friday	Friday
•	•	•	•	•

A. *Liabilities.*

1. Demand Liabilities
2. Time Liabilities
3. Total Demand and Time Liabilities

B. *Minimum amount of cash reserve required to be held under section 18 of Act.*

1. Five per cent of A (1)
2. Two per cent of A (2)
3. Total of B (1) and B (2)

C. *Cash reserve.*

1. Cash **
 - (a) Notes
 - (b) Rupee coin (including one rupee notes)
 - (c) Subsidiary coin
2. Balance with the Reserve Bank
3. Total of C (1) and C (2)

Date_____

Signature_____

THE BANKING COMPANIES ACT, 1949

FORM IV

(SECTION 20)

Name of the banking company_____

Name and designation of the officer submitting the return_____

Statement for the month of_____of unsecured loans and advances (including bills purchased and discounted) granted (in India) to companies in which the banking

* Give dates.

** Cash must not include balance at other banks or any item other than currency notes, rupee coin (including one rupee notes) and subsidiary coin.

company or any of its directors is interested as director, managing agent or guarantor † (To be submitted to the Reserve Bank before the close of the month succeeding that to which the return relates)

A.—Statement of unsecured loans and advances (including bills purchased and discounted) granted to public companies in which the banking company is interested as director, managing agent or guarantor and to private companies in which the banking company is interested as director or guarantor.

— (Rounded off to the nearest thousand)

Name of the company to which the advance has been made.	Nature of interest in the company (whether director, managing agent, guarantor, etc.)	Date of advance	Date of repayment.	Amount outstanding on the last working day of the month	Highest outstanding during the month	Lowest outstanding during the month	Rate of interest.	Nature of advance (whether loan, overdraft, cash credit, purchase or discount of bills etc.)	Remarks
1	2	3	4	5	6	7	8	9	10

Total of column 5

B.—Statement of unsecured loans and advances (including bills purchased and discounted) granted to public companies in which any of the directors of the banking company is interested as director, managing agent or guarantor and to private companies in which any of the directors of the banking company is interested as director

(Rounded off to the nearest thousand)

Name of the director of the banking company, who is interested.	Name of the company to which the advance has been made	Relation of the director of the banking company to the company (whether director, managing agent, guarantor etc.)	Date of advance.	Date of repayment.	Amount outstanding on the last working day of the month	Highest outstanding during the month	Lowest outstanding during the month	Rate of interest.	Nature of advance (whether loan, overdraft, cash credit, purchase or discount of bills etc.)	Remarks.
1	2	3	4	5	6	7	8	9	10	11

Total of Column 6

Date

Signature

NOTE—In case a banking company has no loans or advances to report, the fact may be reported in a letter

† The statement should include loans and advances (including bills purchased and discounted) granted during the month or previously and repaid during the month or outstanding on the last working day of the month.

THE BANKING COMPANIES ACT, 1949

FORM V (See Rule 11)

(SECTION 22)

Form of application for a licence to commence banking business by a company incorporated in India and desiring to commence banking business.

Address_____

Date_____

Department of Banking Operations
Reserve Bank of India,-----

Application for a licence to commence banking business

Dear Sir,

We hereby apply for a licence to commence banking business in terms of section 22 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature_____

1. Name of the company
2. Place of location of the registered office of the company.
3. State whether the company is public or private.
4. Date of incorporation.
5. *Previous applications:*

Give particulars of any application previously made to the Reserve Bank in this connection.

6. *Management:*

- (a) Give names, business and addresses of directors the amount of shares held by each and the names of the bankers of each of them.
- (b) Give the name of the proposed chief executive officer, his qualifications, experience, age and the proposed remuneration.
7. State detailed reasons for the flotation of the company and give statistical and other data, as under, which may have been collected in respect of the area which the company intends to serve.

- (i) The population of the area of operation of the proposed place of business.

- (#) The volume and value of agricultural, mineral and industrial production and imports and exports of the area of operation of the proposed place of business as under:

Commodity	Production		Imports		Exports	
	Volume	Value	Volume	Value	Volume	Value
1	2	3	4	5	6	7

- (iii) If there are any scheme for agricultural, mineral or industrial development give details of the same and their probable effects on the volume and value of the present production, imports and exports.
- (iv) If the existing banking facilities are considered inadequate, give reasons.
- (v) *Prospects*: Give as under an estimate of the minimum business which the company expects to attract at the proposed place of business within 12 months.

I. Deposits.	Amount in thousands of rupees	<i>Rates proposed to be allowed on various types of deposits.</i>
		Minimum Maximum
II. Advances.	Amount in thousands of rupees	<i>Rates proposed to be charged on various types of advances.</i>
		Minimum Maximum

8. Forward an up-to-date copy of the Memorandum and Articles of Association and a copy of the prospectus (with certified translations in English if not in that language).

9. State whether the company fulfils the conditions laid down in sub-section (3) of section 11, and whether it is agreeable to permit the Reserve Bank to satisfy itself by an inspection of the books of the company or otherwise that the prescribed conditions are being fulfilled by the company.

10. Any additional facts which the company may wish to adduce in support of its application.

N.B.—(1) If an application is for commencing banking business at Bombay, Calcutta, Madras, Delhi or Kanpur, the details asked for under item 7(i) (ii) and (iii) need not be supplied.

(2) If a company is unable or unwilling to supply full details in respect of any of the items, reasons for the omission may be given.

(3) If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 6, 7 and 8 need not be supplied unless there is any change since the last application.

THE BANKING COMPANIES ACT, 1949

FORM VI (See Rule 11)

(SECTION 22)

Form of application for a licence to carry on banking business by a company incorporated in India and in existence on the commencement of the Act.

Address—

Date—

Department of Banking Operations,
Reserve Bank of India, _____

Application for a licence to carry on banking business

Dear Sir,

We hereby apply for a licence to carry on banking business in terms of section 22 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature _____

1. Name of the banking company.
2. Place of location of the registered office of the banking company and of its head office.
3. State whether the banking company is public or private.
4. Date of Incorporation.
5. Date of commencement of business.
6. *Previous applications* :
Give particulars of any application previously made to the Reserve Bank in this connection.
7. *Management* :
 - (a) Give names, business and addresses of directors.
 - (b) Give name of the chief executive officer, his qualifications, experience, age and the remuneration paid.
8. *Existing offices* : †
Give the number of offices† in India and a brief description of the system of supervision and control over the branches.

9. Give details regarding the authorised, subscribed and paid-up capital and reserves of the banking company as on the date of the application.

10. Forward an up-to-date copy of the Memorandum and Articles of Association and copies of the balance sheets together with profit and loss account statements for the last five years (with certified translations in English, if not in that language).

11. State whether the banking company fulfils the conditions laid down in sub-section (3) of Section 22, and whether it is agreeable to permit the Reserve Bank to satisfy itself by an inspection of the books of the company or otherwise that the prescribed conditions are being fulfilled by the company.

12. Any additional facts which the banking company may wish to adduce in support of its application

N.B.—(1) If a banking company is unable or unwilling to supply full details in respect of any of the items, reasons for the omission may be given

(2) If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 5, 7, 8, 9 and 10 need not be supplied unless there is any change since the last application.

THE BANKING COMPANIES ACT, 1949.

FORM VII (See Rule 11)

(SECTION 22)

*Form of application for a licence to commence/carry† on banking business in India†
by a banking company incorporated outside India†*

Address_____

Date_____

Department of Banking Operations,
Reserve Bank of India,_____

Application to commence/carry on banking business in India.*

Dear Sir,

We hereby apply for a licence to commence/carry* on banking business in terms of section 22 of the Banking Companies Act, 1949 We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,

Signature_____

† Includes the registered office and all places of business at which deposits are received, cheques cashed or moneys lent.

‡ The portion not applicable should be struck off.

* The portion not applicable to be struck off.

1. Name of the banking company.
2. Place of location of the registered office of the banking company and of its head office.
3. State whether the banking company is public or private.
4. Date of incorporation.
5. Country or State in which the banking company is incorporated

6. *Previous applications :*

Give particulars of any application previously made to the Reserve Bank in this connection

7. *Management :*

- (a) Give names, business and addresses of directors in India.
 - (b) Give the name of the executive officer or the proposed chief executive officer in India, his qualifications, experience, age, and the remuneration paid or proposed to be paid.
8. (a) *For a banking company already carrying on banking business in India :*

Existing offices : †

Give the number of offices† in India and a brief description of the system of supervision and control over the offices †

- (b) *For a company desiring to commence banking business in India:*

State detailed reasons for an office† in India and give statistical and other data, as under, which may have been collected in respect of the area which the company intends to serve

- (i) The population of the area of operation of the proposed place of business.
- (ii) The volume and value of agricultural, mineral and industrial production and imports and exports of the area of operation of the proposed place of business as under:

Commodity	Production		Imports		Exports	
	Volume	Value	Volume	Value	Volume	Value
1	2	3	4	5	6	7

† Includes all places of business at which deposits are received, cheques cashed or moneys lent,

- (iii) If there are any schemes for agricultural mineral or industrial development give details of the same and their probable effects on the volume and value of the present production, imports and exports.
- (iv) If the existing banking facilities are considered inadequate, give reasons.
- (v) *Prospects*: Give as under an estimate of the minimum business which the company expects to attract at the proposed place of business within 12 months

I. Deposits	Amount in thousands of rupees	<i>Rates proposed to be allowed on various types of deposits.</i>	
		Minimum	Maximum
II. Advances	Amount in thousands of rupees	<i>Rates proposed to be charged on various types of advances.</i>	
		Minimum	Maximum
III. Exports &	Import Bills.	Amount in thousands of rupees.	

9. State what arrangements have been made to ensure compliance with the provisions of section 11 (2) of the Act.

10. Forward an up-to-date copy of the Memorandum and Articles of Association and copies of the balance sheets together with profit and loss account statements for the last five years (with certified translations in English if not in that language).

11. State whether the banking company fulfils the conditions laid down in sub-section (3) of section 22, and whether it is agreeable to permit the Reserve Bank to satisfy itself by an inspection of the books of the company or otherwise that the prescribed conditions are being fulfilled by the company.

12. Any additional facts which the banking company may wish to adduce in support of its application.

N.B.—(1) If an application is for commencing banking business at Bombay, Calcutta, Delhi, Madras or Kanpur, the details asked for under item 8 (b), (i), (ii) and (iii) need not be supplied.

(2) If a company is unable or unwilling to supply full details in respect of any of the items, reasons for the omission may be given.

(3) If an application has been submitted to the Reserve Bank in the past, information under items 2, 3, 4, 5, 7, 8, and 10 need not be supplied unless there is any change since the last application.

THE BANKING COMPANIES ACT, 1949.

FORM VIII (See Rule 12)

(SECTION 23)

Form of application for permission to open a new place of business or change the location (otherwise than within the same city, town or village) of an existing place of business under section 23 of the Act.

Address _____
Date - _____

Department of Banking Operations,
Reserve Bank of India, _____

Dear Sir,

We hereby apply for permission to open* a new place of business/change the location of the existing place of business in terms of section 23 of the Banking Companies Act, 1949. We give below the necessary information in the form prescribed for the purpose.

Yours faithfully,
Signature_____

1. Name of the banking company.
 2. Place of location of the registered office of the banking company and of its head office.
 3. State whether the banking company is public or private.
 4. Date of incorporation.
 5. Date of commencement of business.
 6. *Previous applications*: Give particulars of any application previously made to the Reserve Bank in this connection.
 7. *Management*: (a) Give names, business and addresses of directors.
(b) Give the name of the officer-in-charge of the proposed office, his qualifications, experience, age, and remuneration and also particulars about the Local Advisory Board or (local directors), if any.
 8. *Existing offices*: (a) Give the number of offices in India. In the case of offices making losses, also give details as in Table 'A'.
(b) In the case of offices which have been in existence for less than three years on the date of application also give details as in Table 'B'.
 9. *Proposed office*: Give the location of the proposed office.
- 9(a). *Reasons for the proposed office*: State detailed reasons for the proposed office and give statistical and other data, as under, which may have been collected for the proposed office.
- (i) The population of the area of operation of the proposed office.
 - (ii) The volume and value of agricultural, mineral and industrial production, and imports and exports of the area of operation of the proposed office as under:

* The portion not applicable to be struck off.

Commodity	Production		Imports		Exports	
	Volume	Value	Volume	Value	Volume	Value
1	2	3	4	5	6	7

(iii) If there are any schemes for agricultural, mineral or industrial development give details of the same and their probable effects on the volume and value of the present production, imports and exports.

(iv) If the existing banking facilities are considered inadequate, give reasons

(v) *Prospects* Give as under an estimate of the minimum business which the banking company expects to attract at the proposed office within 12 months

I. Deposits	Amount in thousands of rupees	<i>Rates proposed to be allowed on various types of deposits</i>	
		Minimum	Maximum
II Advances	Amount in thousands of rupees	<i>Rates proposed to be charged on various types of advances</i>	
		Minimum	Maximum

10 *Change of location of an existing office* Give the exact location of the office which is proposed to be closed and of the place to which it is proposed to shift it, giving particulars of the new location as in No 9 (a)

11 *System of supervision and control over the proposed office* Give a brief description of the system of supervision and, control which will be exercised over the proposed office and the authority of the officials at the proposed office regarding advances (including bills purchased and discounted).

12 *Capital and Reserves* Give details regarding the authorised, subscribed and paid-up capital and reserves of the banking company as on the date of the application

13 *Expenditure* State the amount already spent or proposed to be spent on staff, premises, furniture, stationery advertising, etc in connection with the proposed office Also state the minimum income which the banking company expects to earn at the proposed office in 12 months

14 Forward an up-to-date copy of the Memorandum and Articles of Association and copies of balance sheets together with profit and loss account statements for the last five years (with certified translation in English, if not in that language).

15 *Other particulars* : Any additional facts which the banking company may wish to adduce in support of its applications

N.B.—(1) The words 'office' and 'offices' wherever they occur in this form include a place or places of business at which deposits are received, cheques cashed or moneys lent.

(6) The information asked for in items 7 (b), 9, 9 (a), 10, and 13 is to be given, separately for each office where the application relates to the opening of or changing the location of more than one office.

NUMBER OF EXISTING OFFICES MAKING LOSSES-- - -

Name of Place	Description i.e. whether branch, sub-office, pay-office, sub-pay office etc.	Date of opening	Amount of loss during the preceding year	Deposits/Advances		Remarks
				As on the date of the last balance sheet		
1	2	3	4	5	6	7

Particulars regarding offices which have been in existence for less than three years on the date of application.

[illegible]

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FORM IX (See Rule 13)

(SECTION 23)

To be submitted within one month after the end of the quarter to which it relates

Name of the banking company_____

Name and designation of the officer submitting the return_____

(a) Statement of offices* in India as on the last day of the quarter ended_____

Name of place where the banking
company has an office (may be
arranged in alphabetical
order)

District and State

1

2

(b) Statement of offices* opened in India during the quarter ended_____

Name of the place District and State

Date of opening the
office

1

2

3

(c) Statement of offices* in India closed during the quarter ended_____

Name of the place District and State

Date of opening the
office

1

2

3

Date_____

Signature_____

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FORM X

(SECTION 24)

Name of the banking company_____

Name and designation of the officer submitting the return_____

Statement of demand and time liabilities and cash, gold and unencumbered approved securities for the month of_____

(To be furnished to the Reserve Bank not later than 15 days after the end of the month to which it relates).

(Rounded off to the nearest thousands)

As at the close of business on

	1st Friday (a)	2nd Friday (a)	3rd Friday (a)	4th Friday (a)	5th Friday (a)
A. <i>Liabilities in India.</i>					
1. Demand Liabilities
2. Time Liabilities
3. Total Demand and Time Liabilities

* Includes the registered office and all places of business at which deposits are received, cheques cashed or moneys lent

B. *Minimum amount of assets required to be held under section 24 of the Act [20 per cent. of A(3)]* _____

C. *Assets.*

- | | |
|--|---------|
| 1. Cash in hand | |
| 2. Balances with the Reserve Bank | |
| 3. Balances with the agent of the Reserve Bank | |
| 4. Gold (valued at a price not exceeding current market price) | |
| 5. Unencumbered approved securities (valued at a price not exceeding current market price) | |
| 6. Deposit with the Reserve Bank under sub-section (2) of section 11 of the Act | |
| (i) Cash | |
| (ii) Unencumbered approved securities (valued at a price not exceeding current market price) | |
| 7. Total of the above assets | |

Date _____

Signature _____

(a) Give dates [where Friday is a holiday under the Negotiable Instrument Act, 1881 (XXVI of 1881), the preceding working day].

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FORM XI

(Section 25)

Name of the banking company _____

Name and designation of the officer submitting the return _____

Statement for the quarter ending _____

Statement of assets and liabilities in India as at the close of business on the last working day of March, June, September or December.

(To be submitted to the Reserve Bank before the 30th April, 31st July, 31st October and 31st January each year).

(Rounded off to the nearest thousand)

A. *Liabilities in India :*

- | | |
|--|-------|
| 1. Demand Liabilities | _____ |
| 2. Time Liabilities | _____ |
| 3. Total Demand and Time Liabilities | _____ |

B. Minimum amount of assets required to be held in India under section 25 of the Act [75 per cent. of A(3)]

C. *Assets in India :*

- | | |
|--|-------|
| 1. Cash in hand | _____ |
| 2. Balances with the Reserve Bank | _____ |
| 3. Balances with the agent of the Reserve Bank | _____ |

4. Balances with other banking companies in current account and money at call and short notice
5. Inland bills purchased
6. Inland bills discounted
7. Export bills drawn in India (in approved currencies)
8. Import bills drawn on and payable in India (expressed in approved currencies)
9. Investments :
 - (a) Central and State Government Securities including treasury Bills
 - (b) Other securities, shares, debentures etc.
 - (c) Other investments
10. Loans, advances, cash credits and overdrafts (excluding those referred to in item 11)
11. Due from banking companies
12. Securities approved by the Reserve Bank under section 25(3)(a) of the Act and not included in any of the above items
13. Premises, Furniture, Fixtures and other fixed assets
14. Other assets
- TOTAL

Date_____

Signature_____

THE BANKING COMPANIES ACT, 1949.

FORM XII

(SECTION 26)

Name of the banking company_____

Name and designation of the officer submitting the return_____

Return of unclaimed accounts in India which have not been operated upon for 10 years or more as on the date of the return

As on the 31st December_____

(To be submitted to the Reserve Bank within thirty days after the close of each calendar year).

Name of office or branch of the banking company	Name & address of the depositor	Balance outstanding	Nature of account (whether current, savings, fixed, or other accounts of the nature of deposits)	Date of last deposit or withdrawal	Reasons, if any, why not operated upon	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Balance brought forward from the previous

return (a)
Interest allowed, if any, during the
year (a)

TOTAL

Additions since the date of the last
return (b)

TOTAL

Withdrawals since the date of the last
return (b)

TOTAL

Balance as at the close of the year

Date

Signature

(a) Only totals may be given under column 3

(b) Particulars to be given under all columns.

N.B.— The particulars required by this form should be given to the extent to which they are available.

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FORM XIII

(SECTION 27)

Name of the banking company

Name and designation of the officer submitting the return

Statement showing the assets and liabilities in India as at the close of business on Friday† the

(To be submitted to the Reserve Bank before the close of the month succeeding that to which the return relates)

(Rounded off to the nearest thousand)

A. Liabilities in India.

1. Paid-up Capital†

2. Reserve Fund and other reserves

B. Assets in India†

1. Cash in hand

2. Balances with the Reserve Bank

† The last Friday of every month or if that Friday is a public holiday under the Negotiable Instruments Act, 1881 (XXVI of 1881), at the close of business on the proceeding working day.

‡ In the case of banking companies incorporated outside India the amount of deposit kept with the Reserve Bank under sub-section (2) of section 11 of the Act should be shown under this head but excluded from the total.

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3. Demand Deposits and contingency (unadjusted) accounts:	3. Balances with the agent of the Reserve Bank
(a) Demand Deposits from banking companies	4. Balances with other banking companies in current account
(b) Demand Deposits from others and contingency (unadjusted) accounts	5. Money at call and short notice
4. Time Deposits :	6. Bills purchased
(a) From banking companies	7. Bills discounted
(b) From others	8. Investments :—
5. Borrowings from other banking companies	(1) In Securities (including treasury bills) of
6. Bills payable	(a) Central Government
7. Branch Adjustments	(b) Any State Government
8. Other liabilities*	(2) Other investments
	(a) Securities of local authorities (e.g., municipalities, port trusts, etc.)
	(b) Shares, debentures, etc.
	(c) Others
	9. Loans, advances, cash credits and overdrafts (excluding due from banks)
	10. Due from banking companies
	11. Premises, furniture, fixtures and other fixed assets
	12. Branch Adjustments
	13. Capitalised expenses including preliminary expenses, organisation expenses, share-selling commission, brokerage, amounts of losses incurred and any other item of expenditure not represented by tangible assets*
	14. Other tangible assets
TOTAL	TOTAL

Date _____

Signature _____

* The balance of Profit and Loss Account, if any, should be included in item A 8 or B 13 as the case may be.

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FORM XIV* (See Rule 15 A)

[Section 45D(2)]

In the High Court of Judicature at Jurisdiction

No. of 19..

In the matter of the Companies Act, 1956.

And in the matter of the Banking Companies Act, 1949.

And in the matter of a Banking Company.

List of Debtors of ordered to be wound up on

1	Serial No.
2	Name and address of Debtor
3	If the original debtor is dead give names and addresses of his legal representatives. (If the original debtor dies after the List is filed in Court but before it is settled, substitute the names and addresses of his legal representatives.)
4	If the original debtor is an insolvent, give the name and address of the assignee or receiver of his estate. (If the original debtor is adjudged insolvent after this List is filed in Court but before it is settled the name of such assignee or receiver shall be added.)
5	Amount of debt due
6	Rate of interest, if any, and the date upto which such interest has been calculated
7	Description of papers, writings and documents, if any, relating to the debt.
8	Whether in respect of the debt the banking company holds personal security only or no security
9	Whether in respect of the debt the banking company holds security other than personal security; if so, give the nature and particulars of the security including the estimated value of the security names and addresses of persons having interest in such security or a right of redemption therein
10	Particulars of guarantee where debt is guaranteed including names and addresses of guarantors and extent of guarantee.
11	Description of papers, writings and documents in support of the guarantee where debt is guaranteed
12	Relief or reliefs claimed.
13	Remarks.

Dated this day of 19..... at

Official Liquidator

* This List should be verified by means of an affidavit.

[This Form has been inserted by S.R.O. 3601/24.11.1964, vide Gazette of India Part II, Sec. 3 dated 4.12.1964, pages 2727 et seq.]

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